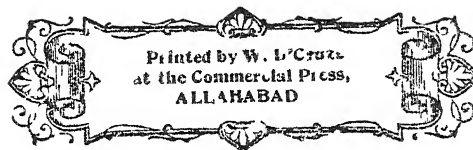


WHAT INDIA THINKS
OF
THE CASE OF
PANDIT ARJUNLAL SETHI, B.A.

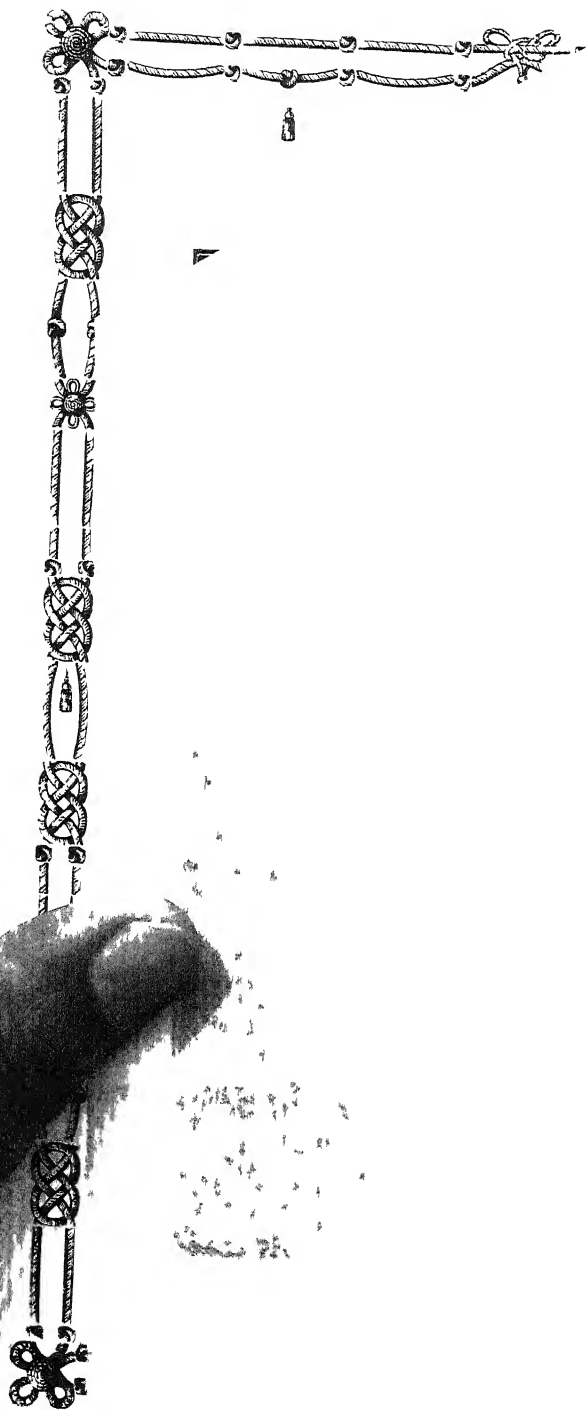
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FOREWORD.

When we published in March last Volume I of the matter concerning the case of Pandit Arjunlal Sethi, we had hoped that the numerous humble representations made by the Jains and the strong presentment of the case by the public Press of India, would soon result in the release of that learned scholar. Unfortunately the humble memorials have not even been acknowledged ; and the authorities have not yet made any public statement on the case. We are therefore driven to the painful necessity of publishing Volume II, consisting of papers concerning the Case of Pandit Arjunlal Sethi ; and trust that this will serve to enlighten the authorities of the Jaipur State as to the pain which has been caused to the Jaina community by this unmerited incarceration of Pandit Arjunlal Sethi, and will actuate our just and sympathetic Viceroy, Lord Hardinge, to intervene in the matter.

BRAHMCHARI SITALPRASADA.

BOMBAY :

1st September 1915.

THE CASE OF PANDIT ARJUNLAL SETHI, B.A., OF JAIPUR.

VOLUME II.

[Copy of the Order, dated 5th December 1914, passed by His Highness the Maharaja of Jaipur.]

TRANSLATION.

In our opinion, it has been satisfactorily proved that Arjun Lal Sethi was concerned in political conspiracies, which is against the Notice published by the State on the 9th June 1909. To allow such a person to remain at large, is dangerous, and we therefore consider it proper that he remain in custody for some time. Therefore, it is ordered, that Arjun Lal Sethi remain in custody for five years, or until further orders.

[Notice, dated 9th June 1909.]

In view of the continuance in certain parts of India of acts of sedition against the Government of India, by disloyal and misguided persons, and lest the contagion of such acts should unfortunately be imported into the territories of the Jaipur State, His Highness the Maharaja deems it necessary for the protection of his subjects, the 27,00,000 people, whose welfare and interests are his sacred trust, to repeat and amplify the terms of the Notice published in the Jaipur Gazette of the 10th September 1908.

II. It must first be stated in the clearest possible manner that His Highness the Maharaja holds all such mad and wicked proceedings in the utmost contempt and abhorrence, and he desires to give public expression on his own account and on behalf of his people to the strong disapproval with which he regards both the proceedings and

those who practise them. Not only are these deeds detestible in themselves, but as being directed against the British Government they are in the highest degree repugnant to His Highness. Since the days of the Mogul Emperor the British Government has ever been the firm and true friend of the Rajput States, and the Rajput State of Jaipur for one will never be unmindful of its obligations of friendship and duty. Under the ægis of the great British Raj, the Jaipur State, like British India itself, has been blessed with a state of peace, prosperity and contentment, never before known, and there must be nothing done in Jaipur territory that shall be inconsistent with the ties of the friendship and loyal devotion that bind the State to the paramount power.

III. Therefore His Highness warns all Jaipur subjects to be careful how they admit or harbour in their midst ill disposed persons of the sort alluded to above. The better to protect and support them in this matter, His Highness is pleased to command as follows :—

Whosoever—

1. Preaches sedition against the British Government or uses any words of sedition either in a lecture, at any gathering, public or private, in a song, in conversation, or in any written paper.

2. Publishes or prints, imports, has, or keeps in his possession, circulates publicly or privately any newspaper, pamphlet, or other printed or written paper containing seditious expressions or seditious drawings.

3. Imports, makes, or has in his possession, or under his control any explosive substance with intent by means thereof to endanger life or to cause serious injury to property whether in Jaipur territory or in British India or any place whatever, or enable any other person by means thereof to endanger life, or cause serious injury to property whether in Jaipur territory or in British India or in any place whatever.

4. Imports, makes, or knowingly has in his possession, or under his control, any explosive substance under such circumstances as to give rise to reasonable suspicion that he has not imported it, is not

making it, or does not have it, in his possession, or under his control for any lawful object.

5. Maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property in Jaipur territory, whether any injury to person or property has been actually caused or not.

6. Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in Jaipur territory, of a nature likely to endanger life, or to cause serious injury to property,

shall on conviction be promptly and seriously punished.

All cases of the above nature will be tried and disposed of by the Court or Courts appointed for the purpose and the sentences passed, carried out in a summary way, subject only to confirmation by His Highness the Maharaja.

Note.—By the expression “explosive substance” is meant any materials for making any explosive, also any apparatus, machine, implements or materials, used for or intended to be used or adopted for causing or aiding in causing any explosion in, or with, any explosive substance; also any parts of any such apparatus, machine, or implements.

[Copy of the Humble Memorial of Gulab Bai, wife of Pandit Arjunlal Sethi, of Jaipur, at present residing at 19, Hewett Road, Lucknow.]

TO—HIS EXCELLENCY THE RIGHT HON'BLE CHARLES BARON HARDINGE OF PENSHURST, P.C., G.C.B., G.M.S.I., G.M.I.E., G.C.M.G., G.C.V.O., I.S.O., Viceroy and Governor-General of India.

Most respectfully sheweth,

1. That Your Excellency's memorialist is the wife of one Arjunlal Sethi, who graduated in the Allahabad University in 1902 and started life as a private tutor to a son of a nobleman in the Native State of Jaipur in Rajputana.

2. That in or about 1904 he accepted the office of Manager of a School at Mathura which was established and maintained by a

registered Society of his community called the Digambar Jaina Maha-Sabha.

3. That the said Sabha organised a deputation of the members of the community for the purpose of raising funds for that School and that your memorialist's husband served for some time as a member of that deputation which consisted of, among others, Sahu Jug-mandardas, Rais and Honorary Magistrate, Najababai, Jain Dhamma-bhusan Brahmachari, Sital Prasad, and Dharmopadeshak Kalyan Rai, who are prominent members of the Jaina community.

4. That subsequently (1905), the said School was transferred to Saharanpur, which is inhabited by a large number of members of the Jaina community, and he served again as a manager of the School at Saharanpur for about a year.

5. That in 1906 your memorialist's husband started an Educational Society, called the Jaina Educational Society of India, at Jaipur, which is also a stronghold of the Jainas, and under the auspices of this Society schools and hostels were started for the education of Jaina boys and girls in Jaipur, and outlying Districts in that State.

6. That your memorialist's husband was devoted to a life of educational activity and social service and was, to the best of your memorialist's knowledge and belief, highly respected by his community for the service he was rendering and also for his personal character.

7. That your memorialist's husband was, in 1913, appointed Principal of a School which was to be started by Rai Bahadur Seth Tilokchand Kalyanmal of Indore, a rich banker of that State, who had munificently endowed that School.

8. That while at Indore he was arrested on March 1914 by the Indore Police, at the instance of the Criminal Investigation Department of Delhi, and after being kept in custody for a few days at Delhi he was taken back to Indore and released there on bail.

9. That a few days later his bail was cancelled and he was again taken into custody and kept in confinement for 3 or 4 months at Indore.

10. That after 3 or 4 months he was taken in custody to Jaipur (Rajputana) and delivered to the Police of that State, and he has ever since been kept in confinement there.

11. That he has, so far as your memorialist knows, never been tried in any Court of Law in British India or in the Native State of Jaipur.

12. That your memorialist has now learnt that only in December last executive instructions were issued by the Jaipur Darbar to the effect that her husband was to be kept in custody for five years, or until further orders.

13. That your memorialist does not know yet for certain on what charge he was required by the Criminal Investigation Department at Delhi to be arrested at Indore, or on what grounds he was transferred to Jaipur, or on what grounds he has been ordered by His Highness the Maharaja of Jaipur to be kept in custody for such an indefinite term, or what evidence incriminating him has been discovered, and how that evidence has been scrutinized and tested.

14. That from what has appeared in the newspapers and from what she has learnt from her sympathisers, it seems that the arrest of her husband took place in connection with the Delhi Conspiracy Case and that his name was also mentioned in the case relating to the murder of a Mahant at Nimej and tried at Arrah, in the province of Bihar.

15. That your memorialist understands that in both the cases mentioned above it was admitted by the prosecution that for want of evidence they could not proceed against him.

16. That your memorialist was waiting for the final disposal of these cases by the highest Courts of Appeal and she now understands that the Delhi Conspiracy Case has been finally disposed of by the Punjab Chief Court and the Arrah case similarly disposed of by the Calcutta High Court, and that neither in the one case nor in the other has any thing been found against your memorialist's husband by the Judges of the Highest Courts in Lahore or Calcutta.

17. That your memorialist then submitted a humble memorial to His Highness the Maharaja of Jaipur on the 19th February by telegram, and that, although she has attempted to invite His Highness's attention to her humble memorial by several subsequent telegrams (copies of which are hereto attached), she has unfortunately failed to attract His Highness's attention.

18. That your memorialist ventures to submit that, as his arrest originated with the Criminal Investigation Department of British India, she is entitled to approach Your Excellency as the Head of the British Government in India and as the representative of the Crown to afford to him and to her and to their children that redress which they are in justice entitled to, in the circumstances submitted above, and to bring about his release by the Government of His Highness the Maharaja of Jaipur which has never given him even a chance of defending himself publicly and of putting to test the suspicions which have been woven round him behind his back.

19. That your Lordship's memorialist respectfully begs to submit that howsoever suspicion might have justified his arrest and detention for one year without trial and even an open formulation of charge against him, suspicion alone cannot, according to any system of justice or equity, justify the perpetuation of his confinement.

20. That your humble memorialist firmly and confidently believes in her husband's innocence and knowing, as she does his mental disposition, his intellectual pursuits, religious turn of mind and his devotion to the cause of education and social reform, she cannot believe or accept that he has been guilty of any crime against the British Government, or any Government or individual for that matter, and she is firmly persuaded that he has fallen a prey to mere suspicion, perhaps because he was a school master and an enthusiast in the cause of education and religion.

21. That your humble memorialist, ever since the arrest of her husband, has passed a life of misery which can better be imagined than described, that she has had to break up her house and to remove from Jaipur with her four children, and, in the absence of the

bread-winner of the family, has had to depend upon the generosity and support of some members of her community.

22. That your memorialist ventures to submit, that if a reference was made to the Leaders of the Jaina Community in British India or in Rajputana—men whose loyalty is beyond all dispute—they would be able to testify to her husband's high character and purity of aims and ideals in life, and absolute immunity not only from any dangerous political proclivities, but also from all politics ; and she therefore feels her misfortune all the more keenly that mere suspicion should be considered a sufficient reason to deprive her husband of his liberty and character and herself and her children of their only protection in life. And your memorialist trusts that in considering her humble prayer Your Excellency will be actuated by your well-known sense of justice and feelings of charity and mercy.

23. That in conclusion Your Lordship's humble memorialist shall, as in duty bound, ever pray.

GULAB BAI,

Wife of Arjun Lal Sethi.

[True copy of Telegrams sent to His Highness the Maharaja of Jaipur.]

19th February 1915.

I

HIS HIGHNESS MAHARAJA SAHIB BAHADUR OF JAIPUR, HARDWAR.

As the wife of Arjunlal Sethi, who was arrested by Indore Police, at the instance of Delhi Criminal Investigation Department in March, 1914, and after few months transferred to Your Highness's State, I humbly approach Your Highness to mercifully consider his case. He has not been tried in any Court in British India or in Your Highness's State. No charge has been formulated, much less established against him. I do not know why he was arrested, but I am told by others that he was arrested in connection with the Delhi Conspiracy Case and the Airah Murder Case. He was no party to either of these cases and neither the Punjab Chief Court nor the Calcutta High Court has found anything against my husband. The prosecution in

both cases publicly admitted that they had no evidence to proceed against him. Therefore his arrest can be justified only upon suspicion. I appeal to Your Highness to consider whether it is consistent with the traditions of Your Highness's justice that the bread-winner of my family should be deprived to me and deprived of his liberty in this manner. Suspicion and confidential reports, untested by any open investigation, ought not to weigh against the antecedents and the whole tenour and aims and ideals of my husband. Leading members of Jaina Community in British India and in Your Highness's State and other States are prepared to testify to his character, loyalty and absolute freedom from all political bias or work. Now that the Arrah and Delhi cases have been finally decided, I humbly and earnestly appeal to Your Highness to release my husband, who has already suffered much and whose suffering has been the cause of the ruin of my house and Your Highness will thereby earn the undying gratitude of a woman in distress. If necessary, I can in person attend upon Your Highness at Hardwar to humbly lay my case. I pray for a gracious reply.

GULAB BAI, WIFE OF ARJUNLAL SETHI,

19, Hewett Road, Lucknow.

23rd February 1915.

II

HIS HIGHNESS MAHARAJA SAHIB OF JAIPUR, HARDWAR.

Respectfully I invite attention to my humble petition by telegram, dated nineteenth February.

GULAB BAI, WIFE OF ARJUNLAL,

Hewett Road.

26th February 1915.

III

HIS HIGHNESS MAHARAJA SAHIB OF JAIPUR, HARDWAR.

Respectfully I invite Your Highness's attention to my humble petition, by telegram, dated nineteenth instant, earnestly appealing to Your Highness to release my husband, Pandit Arjunlal Sethi. Your Highness can well imagine the misery of a woman and her

children when deprived of the bread-winner. Seeing that confinement of my husband cannot be justified except upon suspicion untested by open investigation, and that prosecution in Delhi and Allahabad cases have publicly admitted that there was no evidence against him, I trust Your Highness will be pleased to mercifully order his release. I pray for a gracious reply.

GULAB BAI.

1st March 1915.

IV

HIS HIGHNESS MAHARAJA SAHIB OF JAIPUR, HARDWAR.

Wife of Arjunlal most respectfully invites Your Highness's attention to her three humble petitions by telegrams, dated nineteenth, twenty-third, twenty-sixth February, praying for release of her husband incarcerated without trial. Suspicion may have justified arrest, but should not be basis for imprisonment. Jain Community also approached Your Highness, praying for release. May God bless you. Prays for gracious reply. Destitute, distressed Gulab Bai.

19, Hewett.

4th March 1915.

V

HIS HIGHNESS MAHARAJA SAHIB BAHADUR OF JAIPUR, HARDWAR.

Wife of Arjunlal most respectfully invites attention to her humble petitions by telegrams, dated nineteenth, twenty-third, twenty-sixth February and first March. Solicits permission to attend upon Your Highness at Hardwar, prays for release of her husband. Her sufferings have grown intolerable. The imprisonment of her husband, without any sworn testimony given before him, galls her. Her unshakeable conviction in his innocence, her positive knowledge that her husband lived a religious life, was devoted to spreading general education and promulgating Jain faith, was of mild, unobtrusive, retiring disposition, makes her disconsolate. She appeals to your religious instincts and begs for freedom of her husband from jail, where he is detained on mere suspicion.

GULAB BAI.

[Copy of the Humble Memorial of the entire Jain Community
of Bombay.]

TO—HIS HIGHNESS SARAMAD-I-RAJAH-I-HINDUSTAN RAJ RAJENDRA
SHRI MAHARAJADHIRAJ SIR SAWAI MADHO SINGHJI
BAHADUR, G.C.S.I., G.C.I.E., G.C.V.O., M.D., etc.,
Maharaja of Jaipur.

Most respectfully sheweth,

1. That Your Highness's memorialists are Jains of all the three sections of that religion residing in the city of Bombay, and engaged almost exclusively in the peaceful pursuit of Commerce and Industry or of the learned professions of Law or Medicine ; and that they are the loyal and law-abiding subjects of His Majesty the King-Emperor.

2. That your memorialists beg to approach Your Highness in the matter of one Arjun Lal Sethi, a resident of Jaipur, and, your memorialists believe, a subject of Your Highness, who, ever since he graduated in 1902 from the Allahabad University, has worked incessantly and exclusively, sincerely and strenuously, in the cause of the education and religious awakening of the Jain community of India. Starting life as a privatetutor to a young nobleman of Jaipur, Arjun Lal Sethi commenced his life's mission by becoming the Manager of a school at Mathura, subsequently transferred to Shaharanpur, which was established and maintained by the Digambar Jain Mahasabha. For two years he worked as such, assisting at the same time in a deputation of influential Jains for collecting funds for the school with all his characteristic energy and enthusiasm. In 1906 Jaipur, his native place and Your Highness's capital, began to feel the beneficent influence of his activity. The Jain Educational Society of India was organised by him at Jaipur, a Society which gave birth to numerous schools and hostels all over Your Highness's dominions for the purpose of educating and bringing up as good Jains, peaceful and mercy-loving, the rising generation of Your Highness's subjects, and he worked at this noble object till he was placed in a situation which furnishes the sad occasion for this memorial to Your Highness.

3. That Mr. Sethi has been all through his brief career not only a great educationist but a still greater scholar. He is a profound student of the Jain Scriptures and of Jain literature, and his unrivalled mastery in these subjects has deservedly earned him our ancient and honourable Aryan Doctorate, the title of Pundit.

4. That, his energy being thus entirely consecrated to the spiritual enlightenment of the Jain community, Pundit Sethi could and did find very little leisure, and still less inclination, to pay any attention to the political agitation of the moment in British India.

5. That, influenced by his religion of infinite mercy to every living being and led by his philosophy to ponder over the eternal problems of the Soul and the Universe rather than those of the body and of one particular corner of the universe, Pundit Sethi was incapable, alike by his education and temperament, of associating himself with political movements of any shade whatsoever, and that he detested all violence to life or property as being opposed to the most fundamental precepts of his religion.

6. That in 1913 Pundit Sethi went to Indore to assume charge of his honorary position as Principal of the Rai Bahadur Seth Tilok Chand Kalyanmal Jain High School in that town : that while there, he was arrested by the Indore police at the instance of the Criminal Investigation Department of Delhi and sent on to Delhi ; and after being kept in custody for a few days there, he was brought back to Indore and released on bail.

7. That a few days later while Mr. Sethi was still in Indore his bail was cancelled ; he was again arrested and kept in custody for three or four months without ever being tried in any Court of Law in that State or in British India.

8. That after the said period of confinement at Indore he was taken under custody to Jaipur, delivered over to the police of Your Highness, and has since then been in confinement in the Jaipur Jail without any trial whatsoever, without even a definite charge having been framed against him.

9. That in spite of the absence of any accusation or trial Your Highness's Government issued executive orders in December last to keep Mr. Sethi in custody for five years or until further orders.

10. That your memorialists, though unenlightened on this subject in a definite way from any reliable source, have, however, read in the public press that Mr. Sethi had been arrested in connection with what was known as the Delhi conspiracy case, and that his name was also mentioned as a suspect in the case relating to the murder of a mahant at Nimej which was tried at Arrah in Behar; that your memorialists did not for a single moment believe that Mr. Sethi could in the slightest degree have been implicated in such outrages, but they thought it most advisable in the interests of justice as well as of the fair fame of Mr. Sethi himself, to await with patience the result of the proceedings in each of these cases.

11. That both the above mentioned cases have now been finally disposed of by the highest Courts of Justice, that nothing has been found in any Court against Mr. Sethi either in the one case or in the other; and that the prosecution themselves have admitted that no evidence was or could be found against Mr. Sethi, and consequently no proceedings were taken against him except the arrest and the subsequent short confinement at Delhi on suspicion.

12. That your memorialists venture to submit that the arrest of Mr. Sethi without any charge and his detention in custody without any trial for such a long time on admittedly the most unfounded suspicion is against every dictate of Law and Reason; that it has the most prejudicial effect on the educational and religious activity of your memorialists' community in general and of a most important section of Your Highness's subjects in particular; and that it is entirely inconsistent with the noble traditions of Justice and good Government of Your Highness's house.

13. That Your Highness's house has been renowned throughout the whole of India ever since the days of Maharaja Jai Singh II, the great mathematician and astronomer, as the most liberal patron of Art and Science, and that consequently Art and Science and Scholarship have flourished in Jaipur as nowhere else in India.

14. That Your Highness's ancestors waged the most strenuous struggles for centuries past in the protection of Religion and thus earned fully the proud title, "The Protector of Cows and Brahmins".

15. That Mr. Arjun Lal Sethi, a great scholar and staunch religionist, is, in all essentials, a Brahmin of the highest order and attainments and deserves the warmest consideration and protection from Your Highness—the Ruler of Jaipur and the descendant of Maharaja Jai Singh II.

16. That your memorialists are fully aware of the many and varied proofs of enlightenment and benevolence which Your Highness has given in the course of your long and prosperous reign, equalling, if not eclipsing, the scholarly fame and martial renown of the great Maharaja Jai Singh II himself; that they therefore felt it a most unpleasant surprise when they learnt of the sad case of Pundit Sethi. They could not conceive how a great Hindu Ruler of an ancient Rajput State, having Your Highness's traditions, Your Highness's training, and Your Highness's temperament, should act so inconsistently with his ancient and honourable title of "Protector of Cows and Brahmins" as to consent to the arrest without any charge and confinement, without any trial, of a man with the attainments and career of Mr. Sethi whose services have contributed so much to the advancement of Your Highness's subjects and of the Jain community and whose innocence has never yet been openly challenged anywhere.

17. That your memorialists are not unaware of the present abnormal situation brought about by the war, and of the consequent pressure of business of the utmost importance which must of necessity claim Your Highness's most urgent attention; and that consequently Your Highness may not have had time to look closely into the case of Mr. Sethi. But your memorialists confidently hope that the obvious injustice of Sethi's incarceration will not fail to obtain its due consideration from Your Highness, and that it will not be allowed to stain the glory of your house, nor to blacken the annals of Your Highness's noble reign, for a moment longer than is absolutely necessary when that case with all its irregularity and inhumanity is brought under Your Highness's personal notice.

18. That your memorialists beg to submit that in accordance with the principles of Justice universally received throughout the civilised world, no man should be kept in secluded confinement for such a length of time as Mr. Sethi has suffered ; that confinement without charge or trial beyond a certain time is forbidden by Law in this country ; and that though by article 7 of the Treaty No. XXXV of 1818 between the Jaipur Durbar and the English Government, British Civil and Criminal Jurisdiction have for ever been excluded from your State, your memorialists venture to urge that by the common practice prevailing in the Native States of India and by the repeated expression of a desire by the princes to bring their systems of administrations in a line with that prevailing in British India, Your Highness's Government has in effect ACCEPTED THE PRINCIPLES underlying the system of judicial administration in British India ; and that, therefore, your memorialists conclude. the arrest and confinement without trial of Mr. Sethi is as illegal as it is unjust.

19. That, if it be suggested that in this matter of Mr. Sethi Your Highness's Government has no jurisdiction inasmuch as the suspicion against Mr. Sethi, whether substantial or groundless, concerns a heinous offence which was committed in British territory, and which can therefore be tried by British Courts of Law alone, Your Highness's memorialists beg to invite Your Highness's attention to Article 7 of the Treaty No. XXXV of 1818 already referred to, whereby the British Civil and Criminal jurisdiction being for ever excluded from Your Highness's State, Your Highness is declared an ABSOLUTE PRINCE within your territory ; that reading this article in conjunction with the first article of Treaty No. XXXVIII of 1868 between Your Highness's Government and the Government of India, which provides that " ANY PERSON WHETHER A BRITISH OR A FOREIGN SUBJECT committing a heinous offence in British territory and seeking shelter within the limits of the Jaipur State shall be apprehended and delivered up by the latter Government to the former ON REQUISITION IN THE USUAL MANNER," there is nothing to show that Your Highness has no jurisdiction in this case of Mr. Sethi, since he IS NEITHER A BRITISH NOR A FOREIGN SUBJECT, BUT A SUBJECT OF

YOUR HIGHNESS in whose case Your Highness has presumably exclusive, or at least concurrent jurisdiction to try that case.

20. That, even if it be admitted that the British Courts alone are competent to deal with this matter, your memorialists submit, that Your Highness is entitled to require that A REQUISITION for extradition of a suspected subject of Your Highness should be made by the British Authorities without any unreasonable loss of time, and to insist, as is the custom of International Law, that your subject so extradited shall receive an immediate and proper judicial trial : and that if at the end of the trial nothing be found against him, he should be acquitted forthwith, set at liberty, and have his innocence fully established.

21. That if, as your memorialists believe Your Highness is fully and exclusively competent to deal with Pundit Sethi's case, your memorialists pray that immediate steps be taken to bring Mr. Sethi to a regular trial should any charge be framed against him, and he should be accorded the opportunity, of which he has been so far most unreasonably and unjustly deprived, to establish his innocence and vindicate his reputation both as an individual and as a member of this community.

22. That pending completion of the necessary judicial procedure leading up to the trial of Mr. Sethi, he should be set at liberty on bail, if bail be at all necessary.

23. That your memorialists most respectfully urge that in the event of no charge being found possible against him, Mr. Sethi should at once be released from imprisonment and allowed to resume his old accustomed work of the spiritual advancement of his co-religionists.

24. That your memorialists have approached Your Highness to seek justice and nothing but justice for Mr. Sethi, since they are fully convinced of his complete innocence and confidently hope to see it thoroughly established when Your Highness has read and considered this memorial ; but that if a plea for mercy were needed the condition of Mr. Sethi's wife and children, whom the confinement of

Mr. Sethi has reduced to the direst straits compelling them to live on the charity of their friendly sympathisers would in itself be enough to work upon Your Highness's noble mind and to assure your memorialists that they shall not pray in vain.

And your memorialists as in duty bound shall ever pray.

[Copy of the Humble Memorial of the Jain, Hindu and other Communities resident in British India.]

TO—HIS HIGHNESS SARANAD-I-RAJAH-I-HINDUSTHAN RAJ RAJENDRA SRI MAHARAJADHIRAJ SIR SAWAI MADHO SINGHIJI BAHADUR, G.C.S.I., G.C.I.E., G.C.V.O., M.D., etc., Maharaja of Jaipur.

Respectfully sheweth,

1. That one Arjun Lal Sethi, who is a graduate of the University of Allahabad, is a resident of Jaipur City in Your Highness dominions.

2. That the said Arjun Lal Sethi is a member of the Jain community, and by reason of his education, attainments, character and self-sacrifice, he is held in esteem by members of his own and other communities.

3. That the said Arjun Lal Sethi was the Director of the Jain Siksha Pracharak Samiti (Director, All-India Jain Educational Society), and assisted materially in the spread of education and enlightenment amongst the Jain peoples in Your Highness' State and in several parts of British India.

4. That the said Arjun Lal Sethi has been kept in custody as a prisoner by Your Highness' Government for nearly ten months, without any trial and without any charges being formulated against him.

5. That your Memorialists are loyal and law-abiding subjects of His Britannic Majesty, whose Government is the Suzerain Power in India, and your Memorialists are mostly engaged in industry, commerce and other peaceful avocations, which bring profit to the community in general and to the State.

6. That your Memorialists have entertained the highest regard for the justice, integrity and straightforwardness of Your Highness' administration. The incarceration of the said Arjun Lal Sethi has caused deep pain to your Memorialists, inasmuch as the same is opposed not only to the ordinary rules of justice but also to the traditions of Your Highness' State, where the liberty of the subjects has always been respected, and arbitrary conduct on the part of the executive always discouraged and severely dealt with.

7. That your Memorialists understand that the incarceration of the said Arjun Lal Sethi is due to a suspicion that he was implicated in some seditious and other criminal movements aiming at disturbing and destroying life and property, and the subversion of established government.

8. That your Memorialists venture to submit that the charges are unfounded, inasmuch as the said Arjun Lal Sethi comes of a community which abhors the destruction of life and the infliction of pain on sentient beings, and which has everything to lose and nothing to gain by anarchical, seditious or criminal propaganda or acts done in furtherance thereof.

9. That the fact that the said Arjun Lal Sethi won the esteem and regard of considerable sections of the Jain community in different parts of India with whom he came into contact shows his nature and his tendencies and the impossibility of his ever having been implicated or concerned in anarchical, seditious or criminal movements, which are held in detestation by members of the Jain community. That, if he had encouraged anarchical or criminal ideas or tendencies by word or deed, he would never have won for himself the high estimation in which he is held amongst Jains.

10. That your Memorialists urge upon Your Highness the fact that in the large number of judicial trials in British India for anarchical or seditious or cognate crimes, no charges were made against the said Arjun Lal Sethi and no steps were taken to bring him to

trial. If there was the slightest evidence against him upon which the British Government could have placed reliance, the said Arjun Lal Sethi would undoubtedly have been placed upon his trial to meet the charges against him.

11. That the fact of there having been no express charges and no trial shows clearly that there is no substance in the charges against him. He is being made to suffer for mere suspicion, which your Memorialists submit has been cast upon him through the machinations of his enemies, as a man with his enlightened views had some enemies amongst the backward sections of his community.

12. That your Memorialists respectfully urge that when there is no just cause the said Arjun Lal Sethi should not be further detained without trial, merely because some persons have sought to cast suspicion on him.

13. That the said Arjun Lal Sethi has a wife, a minor son and 3 minor daughters who are suffering great hardships by reason of the said Arjun Lal Sethi, who used to maintain the family, being in jail.

Your Memorialists humbly and respectfully pray that the said Arjun Lal Sethi be released, or that in any event definite charges be formulated against him and he be allowed an opportunity to meet and refute the said charges: and your Memorialists, who have the fullest confidence in Your Highness' sense of justice, venture to hope that they do not make this appeal in vain.

And your Memorialists, as in duty bound, will ever pray.

[Declaration by some Leading Jainas.]

In view of the vague and ill-founded suspicions against Pandit Arjunlal Sethi, B.A., entertained by the Jaipur State, we consider it our social, moral and religious duty to place on record our firm belief in his innocence. We who have been with him continuously, day and night, for days and weeks on end, and have worked with him in matters communal and religious, are in a position to state that Pandit Arjunlal Sethi, B.A., was a zealous and devoted educationist; his one ambition in life was to serve the Jain Religion and the Jaina community, his mission was to spread general education far and wide and to propagate the Truths of the Jaina Religion abroad, to make people live, and not only profess, the doctrines of Toleration; Kindness, Mercy, Love and Control of Passions and Desires; his amusement consisted of discussions on Karma Philosophy.

We strongly believe that he is the innocent victim of a set of unfortunate circumstances, which could, each and all, be certainly explained satisfactorily, if they were only made known and published. We can never for a moment reconcile ourselves to the thought of his being in any way concerned with any crime or conspiracy.

(Sd.) J. L. JAINI, M.A., BAR.-AT-LAW,
Judge, High Court, Indore,
President, The All-India Jaina Association.

(Sd.) AJIT PRASAD, M.A., LL.B.,
Honorary Editor, "Jaina Gazette,"
and Vakil, High Court, Lucknow.

(Sd.) BRAHMCHARI SITAL PRASAD JAIN,
Editor, "Jain Mitra," Bombay.

(Sd.) BRAHMCHARI BHAGWANDIN,
Rishabha Brahmcharya Ashram,
Hastinapore.

[From the Telegraph, dated 13th February 1915.]

"Justice" has put a number of questions in the *Calcutta Budget* in the case of Pundit Arjun Lal Sethi, B.A., Principal of the Jaina High School at Indore, founded by Rai Bahadur Seth Trilokchand Kalyanmull, which reveal a state of things for which we frankly confess we were not prepared in the beginning of the 20th century, in a country so well governed as India undoubtedly is. The Pundit who is described by our contemporary of the *Jaina Gazette* as the "only man (in the community) who could be truly called a Graduate Pundit", was arrested in the school at Indore in March last by the Durbar police evidently in connection with the Arrah Temple Murder Case and kept in *hawalat* till June when he was released as nothing could be proved against him, but to be re-arrested and sent under police escort to Jaipur. And here he has remained in solitary confinement since then.

From an appeal made by the Pundit's wife, Mrs. Gulab Bai, we learn that after having been kept in cells for ten months he has now been sentenced to five years' rigorous imprisonment, though nothing is known as to who tried him, why he was tried, or when he was tried.

All this reads like a page from mediæval romance, for it is impossible to conceive anything like this in this advanced age. Our friend of the *Patrika* has advised the lady to petition the Jaipur Durbar. But we have our doubts about the usefulness of this step. If the Pundit has been treated like this, it could not have been without the knowledge of the Durbar. Moreover the whole affair is so mysterious from the very beginning that we hardly know how to account for it. Evidently it was for no offence against the Indore Raj that Pundit Arjun Lal was arrested by the Indore police, but on suspicion of complicity with the Arrah Temple Murder case. Why, then, was he kept four months at Indore instead of being handed to the British authorities? Then why was he released and re-arrested and then sent to Jaipur? If the offence had anything to do with Jaipur he would have been

extradited immediately after arrest. It could not be similarly against the Indore Durbar that he could have sinned, because in that case he would be tried at Indore.

All these points leave considerable doubt on the mind. Evidently there is more below than we can see on the surface. And thus, it is for the British Government to look into the whole case and reassure the public mind. We wish some body would take it to England and show to the British public how strongly the administration is being carried on here. We believe there are many among our Jaina brethren who may do this. Moreover, it is a case in which the whole population is vitally interested, for any one may find himself in Arjun Lal's position. If the man is guilty punish him by all means ; but there should be a trial and this trial should be so conducted as to assure the public of the administration of substantial justice. That is the point at issue. No body would have had any thing to say if the trial were held as all trials are held. It is impossible to deny that the case has created great disappointment in the ranks of the Jaina community.

[From the Leader, February 18th, 1915.]

THE CASE OF MR. ARJUN LAL SETHI. JAIN MEETING AT LUCKNOW.

(From the Secretary, Jain Dharma Pravardhini Sabha.)

The Lucknow Jains met on February 11th to consider the question of the confinement of Pandit Arjun Lal Sethi, B.A. Babu Chunnilal Johri, Oswal Jain, was elected Chairman. Pandit Arjun Lal's wife's letter was read and the following resolutions were passed :—

1. That the Lucknow Jains are much aggrieved to hear the lamentable tale of Pandit Arjun Lal's wife and place on record their high appreciation of the selfless devotion and invaluable services of Pandit Arjun Lal Sethi in the cause of education and social reform in the community.

2. That they strongly protest against his confinement without a trial.

3. That a deputation should attend upon the Maharaja of Jaipur and the Viceroy to pray for his release.

[From the "Musulman," Calcutta, February 19th, 1915.]

CONVICTION WITHOUT TRIAL.

Conviction without trial is not only a violation of law and justice but is abhorrent to the feelings of those who have reason and conscience. Unfortunately, in this twentieth century and in a country like India, of course in a Native State, one Pandit Arjunlal Sethi, B.A., has been undergoing imprisonment without any trial. It appears that the Pandit was arrested without any charge, was kept in confinement for 9 months and has been subsequently, without any trial, sentenced to five years' imprisonment. Elsewhere we publish a very pathetic letter from his wife, which goes to show how hard the case is and how pitiable the condition of his children is. If the Pandit is however guilty of any offence, we have no desire to condone it. What we impress upon the authorities in the Jaipur State is that the Pandit must be tried and then punished if found guilty. He must be informed of the charge against him and given the opportunity to make his defence. Nothing of the sort has been done and the Pandit has been punished most arbitrarily. The Jaina community to which the Pandit belongs, as well as his wife, are naturally much agitated over the matter and they demand that justice should yet been done. We too associate ourselves with the demand and trust that the Maharaja of Jaipur and the Government of India will yet be pleased to see that the Pandit is put on his trial and then convicted, if found guilty. What is demanded is justice and bare compliance with law and procedure, and it would be most unfair to deny it.

[Proceedings of a Meeting of the Jain Community of Allahabad, held on the 22nd February 1915.]

Resolution No. I.—We the Members of the Jain community of Allahabad are much pained to hear the heart-rending account of the lamentable plight in which Pandit Arjun Lal Sethi (who has rendered valuable services in the cause of education and social reform) and his family have been placed by the former being locked up in the Jaipur State Jail without trial.

Resolution No. II.—That a message of sympathy be sent to the devoted wife of Pandit Arjun Lal Sethi with the assurance that her Jain brethren will spare no constitutional means of securing justice to her worthy husband.

Resolution No. III.—That a Telegraphic message be sent to His Highness the Maharaja of Jaipur praying for the release of the Pandit.

Resolution No. IV.—That a Telegraphic memorial be submitted to our benign Viceroy, His Excellency Lord Hardinge, praying for the rescue of the Pandit and his family from their unjustified distress.

Resolution No. V.—That a deputation be formed of Members of the Jain community from all parts of India which should, if necessary, wait on His Excellency the Viceroy and His Highness the Maharaja of Jaipur to represent their case of distress, and that the following gentlemen be appointed to represent the Jain community of Allahabad on the deputation, *viz.*, 1, Sheo Charan Lal, and 2, Mool Chand.

Resolution No. VI.—That a copy of these resolutions be sent to the Press.

[Copy of a Telegram sent from Lalla Sheo Charan Lal, President, Jaina Sabha, to Gulab Bai, Lucknow.]

Jains here heartily sympathise in your distress and assure you that no constitutional means of relief to your husband shall be spared.

[Copy of a Telegram sent from Lalla Sheo Charan Lal, B.A., LL.B., Vakil, and Municipal Commissioner, Allahabad, and President, Jain Sabha, to the Private Secretary to His Highness the Maharaja of Jaipur, Hardwar.]

May it please Your Highness,

Jains of Allahabad respectfully pray for the release of Pandit Arjun Lal Sethi who is innocent.

[Memorial from the Jains of Allahabad to the Private Secretary to H. E. the Viceroy, sent on 22nd February 1915.]

May it please Your Excellency,

The humble memorial of the Jains of Allahabad, respectfully sheweth :—

1. They that are much pained to hear of Pandit Arjun Lal Sethi's imprisonment without trial in the Jaipur State Jail at the instance of the C. I. D. of Government.

2. That Pandit Arjun Lal Sethi is faultless and has never been mixed up in politics.

3. That his wife and children are in great distress and lying in Lucknow at the mercy of others.

Your Excellency's humble memorialists therefore pray that your Excellency may be pleased to consider this case of innocent distress with justice and mercy, for which the whole Jain community shall ever pray.

(Sd.) SHEO CHARAN LAL, B.A., LL.B.,

VAKIL AND MUNICIPAL COMMISSIONER,

President, Jain Sabha.

[From the Gujrati, dated 21st February 1915.]

We have published elsewhere an appeal by the wife of Pandit Arjunlal Sethi, B.A., which we are sure will be read every where not only with sympathetic interest, but also with feelings of regret and astonishment. Let us say at the very outset that we know nothing about the Pandit, except what has been stated in the pathetic appeal made to the public by his sorrowing wife. Some of our contemporaries, both English and vernacular, have already commented upon the facts stated by her. But as yet no authoritative denial of them has appeared in the public press. We are, therefore, entitled to assume that her statements are *prima facie* well founded.

The Pandit is a Jain who, we are assured, dedicated his life to the service of his community and has nowhere dabbled in political matters or has had anything to do with any intrigue or conspiracy or any offence. Ten months ago he was arrested at Indore on a suspicion that he had been connected in some way with the Delhi and Arrah cases.

He was, however, never accused of any offence and tried in any court of justice. So far as we are aware, nothing has been elicited in the above trials to connect him in any way with the accused in those trials. But all the same he was kept in the lock-up at Jaipur for ten months and has now been sentenced to confinement for five years !

What is the offence charged against him ? When and where was he put upon trial ? By what tribunal and under what law was he convicted and sentenced ? His wife knows nothing about these matters nor are others, whether interested in him or not, in a better position. This is an unheard-of state of things which can not be tolerated even in a Native State. What is shocking is that in a State like Jaipur one should come across an instance of this kind in which the most elementary principles of criminal jurisprudence would seem to have been set at defiance in such a flagrant manner.

We hold no brief for Pandit Arjunlal. If he has committed an offence, let him be tried and dealt with according to law. But no charge has been formulated against him; he has never been put upon his trial and he has had no opportunity of vindicating his innocence. Surely the Jaipur State has emerged from the traditions of the lawless administration of justice. With the living instances and traditions of British Courts in its neighbourhood, it can not afford to adopt the procedure and the principles of law of lawless *regimes* of old. It should be the pride and ambition of Native States to improve upon the administration of justice in British India, if they can.

But if that be impossible, at any rate, they ought not to be hopelessly behind the Courts in British India. The law of deportations is bad enough in all conscience. But the present is not a case of deportation. When was the peace and security of the Jaipur State threatened by anything Mr. Arjunlal had done? Under the law of deportation there is no period fixed for the confinement of political prisoners. In his case his incarceration is to last for five years.

What Statutes are resting in the archives of the Jaipur State we do not know, nor do we know their contents. But if there is any precious Statute under which such arrests and incarcerations can be justified, it would be better for the authorities in Jaipur to become wide awake to the requirements of modern times, to the dictates of justice and humanity or, at any rate, to those of common sense and to the voice of public opinion and consign to flames such barbarous laws, if any, at the earliest opportunity.

We have no desire to be unfair to the State. But the silence of its responsible authorities in a matter of such supreme importance to the security and liberty of its subjects, justifies the criticism their extraordinary action has called forth in different parts of the country. No matter how serious the offence may be, no man ought to be arbitrarily deprived of his liberty and relegated to Jail to the grief of those dearest to him.

Mr. Arjunlal's case calls for the prompt intervention of the Indian Government and it is to us a wonder why the latter have not yet done so. The policy of non-intervention has hitherto been a myth in many matters. When the British Government feel disposed to do so in their own interests or for other reasons, they have never shrunk from doing so. The public have no access to the wonderful and countless secrets contained in the archives of the Political Department, nor have they any particular desire to know them. All that they have a moral right to insist upon is, that, if there ever was a case for the righteous intervention of the Indian Government, the present is undoubtedly one of that kind. We are ourselves in favour of the policy of non-intervention in the affairs of Native States by the British Government. But there have been many inroads upon that principle in the past, and if Native Rulers and their advisers could speak out their mind, it would be found that the principle of intervention, direct or indirect, has been more or less operative, and in special cases like the present it is the duty of the Indian Government to interfere with promptitude and prevent the continuance of a gross wrong.

His Excellency Lord Hardinge is a Viceroy endowed with righteous instincts. His very first utterance after regaining consciousness when a dastardly and disgraceful attack was made upon his person at Delhi shows how tolerant, forgiving and magnanimous he is. We do not believe His Excellency will allow such gross injustice to be perpetrated in the name of law or under the guise of political reasons even in a Native State, when he comes to know the real facts of the case.

It is humiliating for an Indian to have to complain against the high-handed and arbitrary action of a Native State and to appeal to the Indian Government for redress. But unfortunately facts are at times stronger than one's wishes, and when considerations of justice and humanity are concerned, it does not matter to us that the erring party is an Indian State. Mr. Arjunlal is an educated man and no Indian, whether educated or otherwise, can for a moment put up

with the idea of his being incarcerated without any trial. He is a Jain and we would be greatly astonished if this wealthy and influential community whose devoted servant he was were to remain silent and do nothing to bring about his release from jail by every constitutional means in their power.

The case involves an important question of principle affecting the life and liberty of the subjects of Native States, the administration of law and justice therein and the policy of intervention in the internal affairs of Native States. It is as such that it has attracted the notice of the Indian press and of a large section of the Indian public, and we do hope that His Excellency the Viceroy's Government will do what is demanded by the most elementary considerations of justice.

Surely the greatness and reputation of Jaipur can never rest upon the *victory of force* but only upon the victory of law and order, moral strength and humanity. Righteousness exalteth a nation. That should be the motto of the City of Victory and the dominant principle of its administrators. There is neither glory nor victory in incarcerating a poor man without trial. Gulab Bai's piteous appeal speaks for itself. Helpless as she is, it must prove irresistible and successful at no distant day. Unfortunately that is the only relief and consolation that we can afford to her for the present in addition to the genuine sympathy of the Indian public.

[From the Indian Social Reform, dated 21st February 1915.]

IMPRISONMENT WITHOUT TRIAL.

It seems that Puudit Sethi was arrested about ten months ago at Indore, that since then he has been, but for a few days, in the lock-up, and that he has now been sentenced to five years' imprisonment without a trial by the Jaipur Durbar. "This should not lead you to think," writes Mrs. Gulab Bai, "that he had been guilty of some crime, for even up till now, the offence for which he has been punished, if any, has not been disclosed. Up till

now, no case has been instituted against him which may lead one to think that he is guilty. If he can be guilty of anything it can only be that he has dedicated his life to the service of the Jaina community, that he considered the spread of education as his paramount duty, that he had always been thinking of means for the propagation of Jainism, and had always kept himself aloof from the affairs of the world. It was supposed that he had been arrested in connection with the Delhi and Arrah cases. But how can one believe this? These cases were political and my husband kept miles away from political matters."

We need not take too literally this testimony of a devoted wife to her husband's innocence, but if it is the fact that the Pundit has had no charge formulated against him and has not been put on his trial, the conduct of the Jaipur Durbar must be held to be contrary to every conception, occidental or oriental, of the dispensation of justice, which is the first duty of a ruler.

No discussion of the action of a Native State can be raised in an Indian Legislative Council, but an interpellation whether the Government of India's attention has been called to the allegations in Bai Gulab Bai's appeal may not be out of order. But it is to the sense of justice of the Jaipur Durbar that we would appeal. We have no right to condemn the Durbar of Jaipur on *ex parte* allegations, and we trust that, for the sake of its good name, it will publish a full statement of its proceedings against Pundit Arjunlal Sethi.

Several years ago when one of the Chiefs opposed the attempt of Government to have a Judicial system introduced in the Kathiawar States, the Political Officer at that time used some memorable words of warning to an obstructive Chief, which deserve to be inscribed on the portals of the Durbar of every Native State which has as yet no regular system of administration of justice on modern principles. There is no reason to think that the race of Political Officers of this type has become extinct.

[From the Amrita Bazar Patrika, dated 25th February 1915.]

THE CASE OF PANDIT ARJUNLAL SETHI.

Five years' imprisonment without Trial.

The case of Pandit Arjunlal Sethi reads more like a romance than a reality. The story is of such a startling character that it will bear repetition. Here are the main facts of the case, so far as we can gather from the letter of his wife and other communications placed at our disposal. Arjunlal, who is a graduate, is an important member of the Jain community. By his selfless devotion to the cause of religious and secular education among his co-religionists for the last ten years or more, he had risen to the position of a leader. He was the Director of the All-India Jaina Educational Society and had been appointed principal of the Jaina High School at Indore in March last, when, all of a sudden, he was arrested there on a requisition of the Delhi C. I. Department. Nobody could divine the cause of this extraordinary proceeding, but it transpired afterwards that he was suspected of having had some connection with the Delhi conspiracy or the Arrah murder cases.

From Indore he was taken to Delhi in custody but was not tried along with the other accused in the Delhi case, as there was no evidence forthcoming against him. He was then released, but re-arrested at Indore. It is not clear at whose instance was this second arrest made; but the general belief is that it was done either by the order of the Government of India or by the Indore State. Why he was again taken in custody was however not disclosed.

We find him next in the grip of the Jaipur State, which at once put him in solitary confinement. Was the second arrest then made at the request of the Jaipur State, or was he made over to that State by the British authorities in the interests of the Government of India? There is no one to answer this question. But the most astounding feature of the story is that he had been kept in solitary confinement for nine months, though no charge was formulated against him nor was he placed on his trial!

While in the Jaipur Jail, he was, it is said, forbidden to visit the Jain temple, though he was at first allowed to do so. The result was, that he did not take his food for eight days, as staunch Jains do not touch their food without visiting the temple. Why this needless hardship was imposed on the Pundit is not known ; nor is any body aware how he was afterwards persuaded to take his food and save his life.

But this was only the beginning of his trouble. After he had been kept in solitary confinement for about 9 months, he was in December last ordered to undergo 5 years' imprisonment by an executive order of the Maharaja of Jaipur ! Why ? That is a mystery which has to be unveiled. Thus he was sent to jail without any trial, and nay, even without a charge. Is there any law in Jaipur which empowers that State to take away the liberty of a man at its sweet will ? Surely, that cannot be, for not only is its ruler an enlightened Prince, but he acknowledges the supremacy of the British Government which can never tolerate such an outrage.

The incident has naturally created a great commotion among the Jain community. Here is an esteemed leader of theirs who was doing them valuable services at immense personal sacrifices suddenly spirited away and confined in jail for five long years without rhyme or reason ! Where is the safety of others ? Where is the liberty of the subject ? The incident should create alarm and consternation not only among the Jains but every class of Indians residing either in the Indian States or in British India. For, the officers of both the British Government and two Indian States are concerned in the matter. Mr. Ajit Prasad, the Jain Vakil of Lucknow, thus speaks of Pundit Arjunlal in a public speech :—

“We, Jains, who have known him for years from the time he left College, and commenced to work in the cause of Jain education, we who have known him in private and intimately, we who have seen him night and day, we who have worked with him, and amongst whom he has worked, we Jains are in a position to say that politics was not within his line of work. The whole of his time and mind was

completely taken up by schemes for the up-lifting of the backward Jain community."

We are told that the conviction of the entire Jaina community is that Arjunlal is incapable of committing any political crime. But that is not the point. What we urge is that no one should be held guilty and sentenced without a judicial trial. As a matter of fact, even a red-handed murderer is not condemned and hanged unheard. The reputation of both the Jaipur State and the Government of India is involved in the matter. We cannot persuade ourselves to believe that either the Maharaja of Jaipur or the British authorities are capable of doing an act which is so wantonly opposed to the dictates of elementary justice and humanity.

A graver outrage cannot be conceived than that of robbing the freedom of a man and consigning him to a prison house, without giving him an opportunity to defend himself in a Court of Justice. Was the Pundit implicated in the Delhi conspiracy case or the Arrah murder case? Evidently not. For neither the Punjab Chief Court nor the Calcutta High Court, which disposed of these cases, has found anything against him. Is it possible that he has been punished as a felon on mere suspicion? That is a most dangerous doctrine : indeed, if those who are mere suspects in the eyes of the C.I.D. people are to be treated in this fashion, then half the population of India should be sent to jail.

We understand that the wife of Pundit Arjunlal has submitted a touching appeal to the Maharaja of Jaipur. We are glad that she has adopted this course. Now that the matter has been brought directly to the notice of His Highness, it is expected that the gross wrong done to her husband will be righted. The Maharaja can no longer plead ignorance and two alternatives are open to his Durbar : either the latter should bring a specific charge against the Pundit and give him a fair trial or release him without further delay. This would be doing only a bare justice to him.

The pitiful condition of his wife should also appeal to the generous heart of the Maharaja. The incarceration of her husband has not

only ruined her home but proved a source of indescribable misery to her. Of course no one can sympathise with her if her husband has been justly punished. But, is he guilty? That is the whole point. So long he is not charged and tried in a regularly-constituted judicial tribunal he must be held innocent. From this point of view his imprisonment is atrocious and absolutely without justification.

[From the Leader, dated 11th March 1915.]

MR. ARJUN LAL SETHI'S CASE. JAIN MEETING AT AGRA.

The Jain community of Agra with the members of the Jain Kumar Sabha, Agra, assembled in a meeting in the Jain Temple on the night of 22nd February to consider the heart-rending appeal of the wife of Pandit Arjun Lal Sethi brought to their notice through the press, and passed the following resolutions :—

1. That the Agra Jains are much grieved to hear the lamentable tale of Pandit Arjun Lal's wife and record their high appreciation of the selfless devotion and invaluable services of Pandit Arjun Lal Sethi in the cause of education and social reform in the community.

2. That they strongly protest against his confinement without a trial.

[From The Modern Review, March 15th, 1915.]

ARJUN LAL SETHI'S CASE.

The case of Pandit Arjun Lal Sethi is a peculiarly hard one,—similar to that of several innocent gentlemen in British India who were deported without trial and against whom not an iota of evidence could ever be brought forward. The Pandit has been sentenced to undergo confinement for five years. There has been no trial, because, it can be safely presumed, there is no evidence against him. He is a subject of the Jaipur State in Rajputana. As there is no constitutional check on the arbitrary actions of the Rulers of the Indian States, there can be no hope for the Pandit regaining his liberty

before the period of five years is over, unless the Maharaja of Jaipur relents or the Viceroy intervenes.

It always gives us great pain to criticise any Indian State, and in this particular instance we are not at all disposed to find fault with the Maharaja, for we do not know how far he is a free agent in the matter, or how far his hands have been forced by extraneous influences. We incline to the view that he would not have been unjust and would gladly yet be just, if he could have his own way. The only way out of the difficulty is for the Viceroy to mercifully interpose, and request the Maharaja to set free the unfortunate Pandit.

[Letter from M. J. Mehta, Esq., Bar.-at-Law, President of a General Meeting held on 14th March 1915, at Bombay, to Shrimati Gulab Bai, wife of Pandit Arjun Lal Sethi, Allahabad.]

I am directed by a large meeting of Jains held in Bombay on the 14th instant to forward a copy of the resolution passed therein.

You will note that the meeting was convened by, and represented all, the three sections of the Jain community.

Let me assure you that all the Jains of Bombay sympathise with you and your children in your hour of trial and sufferings, and they have resolved that every constitutional step should be taken to bring about speedy liberty of your worthy husband, Pandit Arjun Lal, whom almost all hold in reverence and respect.

RESOLUTION.

The Jain community of Bombay assembled in this Meeting representing all its three sections begs to convey, through the President, its deep and heartfelt sympathy to the wife and children of Pandit Arunlal Sethi, B.A., of Jaipur, in their hour of trial for the many and

various important services rendered by Mr. Sethi to the community in the cause of its education, its religious awakening and its perception of the feeling of unity as a community, and further assures them that the community will do all in its power by all recognised and constitutional means to obtain speedily the liberty of Mr. Sethi.

That the President be authorised to forward this resolution to Mrs. Sethi.

[Copy of Telegram from The Jain Sabha of Chhindwara sent to Gulab Bai, care of Ajit Prasad, Advocate, Lucknow, dated the 23rd March 1915.]

Jain community expresses profound sympathy with you in your suffering.

[From the Hindu, dated 4th April 1915.]

PANDIT ARJUNLAL SETHI, B.A.

The All-India Jaina Association has taken great pains to collect and publish in a booklet form all the leading Indian Press opinions regarding the case of Pandit Arjunlal Sethi, B.A., a Jain Educationist of Jaipur, now imprisoned for five years under the orders of the Darbar of Jaipur. The remonstrances of the several Indian papers against the treatment of this Jain Pandit are reproduced in the booklet. An important Jain Association expresses the following feeling prevalent among the Jain community : " 'The conviction of the entire Jain community is that Pandit Arjunlal Sethi is innocent. He has been working for the Jain community with great self-sacrifice for over ten years and by the unostentatious but sincere devotion that he displayed he has won the hearts of his whole community and of many others who know him, for his mission is not sectarian. Education is what he was working for. But even if he is guilty it is certainly not just to deny him the opportunity of defending himself in a Court. All that

we want is justice. Let a trial take place, and then if he is proved to be guilty, let him be punished."

The booklet also contains a pathetic appeal from Mr. Arjunlal's wife to the Jain community, to the Government of India and to the Darbar of Jaipur praying for justice and mercy to her husband now in Jail. A perusal of the Press opinions and the appeal by Mrs. Arjunlal Sethi discloses the fact that the case of Arjunlal is eminently one that calls for an impartial investigation. It is hoped that the distressing appeal of Gulab Bai would meet with a sympathetic response and justice would be done to the Jain leader, Pandit Arjunlal, and through him to the community at large.

[Copy of a Telegram, dated 1st June 1915, received by Mrs. Arjun Lal Sethi, from Seth Mulchand Kasandas Kapadia, Editor of the "Digambar Jaina," Surat.]

All the members of three sects of Jains of Surat assembled this evening at Chandawadi express their heartfelt grief at the confinement of Pandit Arjun Lal Sethi, B.A., by the Jaipur State without trial over a year ago, and as in their opinion Sethiji is a learned Jain Pandit and a reformer of the community and so is beyond any political suspicions, therefore they request H. H. the Maharaja, Jaipur, and H. E. the Viceroy to release the Pandit in order to allay the dissatisfaction from the hearts of the Jainas.

Copies of this Resolution be forwarded to H. H. the Maharaja and H. E. the Viceroy.

THE DELHI CONSPIRACY CASE.

JUDGMENT.

The Sessions Court, Delhi, in Trial No. 6 of 1914, had before it eleven accused persons, the charge against them, as amended by the learned Sessions Judge on 11th July 1914, in the course of the trial, being as follows :—

That you between the 27th day of March 1913 and 31st March 1914, both at Delhi and Lahore and other places in British India, did agree with one another and other persons, to wit, Dina Nath, Sultan Chand, Rash Bihari Bose, Hardyal, *Arjun Lal Sethi*, Hari Ram Sethi, and *other persons unknown*, to commit the offence of murder under section 302, Indian Penal Code, and that you were thereby parties to a criminal conspiracy to commit the offence of murder ; in pursuance of which conspiracy a murder, to wit the murder of Ram Padarath, was committed at Lahore on 17th May 1913, and that you thereby committed offences punishable under sections 302/102-B and 302/109 of the Indian Penal Code and within my cognizance.

After a long and patient trial lasting continuously from 21st May 1914 to 1st September, the learned Judge took time to consider the case, and on 5th October passed orders, acquitting five of the accused persons, namely, Chhote Lal^{*} *alias* Ram Lal, Charan Das, Mannu Lal, Raghobar Sharma and Khushi Ram, and convicting the other six, *viz.*, Basant Kumar Biswas, Abad Bihari, Amir Chand, Balmokand, Balraj and Hanwant Sahai under section 302/102-B., I. P. C., the following sentences being meted out :—Abad Bihari, Amir Chand, Balmokand, death ; Basant Kumar Biswas, Balraj, Hanwant Sahai, transportation for life.

Pari passu with the above case the Court tried Abad Bihari and Amir Chand aforesaid on a charge under sections 4, 5 and 6 of Act VI of 1908 (Explosive Substances Act) in connection with a bomb cap said to have been found in their possession on 16th February

^{*}Called Ram Lal in the rest of this judgment

1914, and (again on 5th October) found them guilty, and under section 4 of the Act sentenced them to transportation for 20 years. Though the finding of the cap comes into the other case and will have to be discussed by us in connection with it, we have not yet heard it argued upon *qua* the charge under the Explosives Act; and in view of the findings at which we have arrived in the more important case, it will probably be unnecessary for us to deal at all with the

* Nos. 852, 853, 923, 851, 854, 924, Reference 135 of 1914, Appeal No. 905 and Revision 2069 of 1914.

appeals in the minor case at the present time. What we have to do now is to deal with* the six appeals of the six convicted men, to consider under section 374, Criminal Procedure Code, the cases of the three sentenced to death, and to deal with an appeal and an application for revision put in on behalf of Government, namely, appeal against the acquittal of Charan Das and application for enhancement of the sentence of Basant Kumar Biswas. We have heard these seven appeals and this application fully and ably argued, and we wish to express here our indebtedness to the learned Counsel on both sides for the valuable assistance they have, one and all, rendered to us.

At this point it is convenient to deal finally with one or two matters connected with the wording of the charge. It has been argued that the charge is vague, inasmuch as (a) it states no definite date on which the accused did "agree," (b) it does not specify the "other places," (c) it does not say *whom* the conspirators agreed to murder. I am not pressed by this contention. As regards (a) I note that in the original charge the *terminus a quo* was 1st October 1910, which was altered to 27th March 1913, by way of somewhat meticulous precaution, because the latter was the date of the coming into force of the new law contained in section 120-B., I.P.C. I would rule without hesitation that it is not necessary for the prosecution to attempt to fix a precise date for the inauguration of the conspiracy: it is sufficient if they state and prove that between certain dates a conspiracy was in existence. Similarly, I cannot see that the accused have been in any way prejudiced by the use of the phrase "other places": nothing has been unfairly sprung upon them under

cover of that phrase. Lastly, it is clear, as regards (c) from the evidence produced in Court that the conspiracy charged was an agreement to murder Europeans (especially Britons) and officials serving the British Government. Therefore, even if it would have been more in accordance with the requirements of law—section 221 (3) and section 222 (1), Cr. P. C.—to add some such words as the above, one has only to turn to section 225 of the same Code to see that such an omission, which could not “in fact” mislead the accused and has certainly not “occasioned a failure of justice,” cannot be “regarded at any stage of the case as material.”

Again, two or three questions of law have been debated before us, which touch the cases of most of the accused persons, and I find it convenient to discuss those questions now. Each of the accused is entitled to an independent examination of the evidence bearing upon him, and it is therefore important to start with clear ideas as to what is and what is not relevant of the evidence, oral and documentary, on the record, and as to the value of the testimony of accomplices, and as to the amount and nature of the corroborations required of such testimony. The first question raised is as to the meaning and effect of section 10 of the Indian Evidence Act, which I give *in extenso* thus:—

“Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it”

Illustration.—Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi, to G at Kabul, the money which C had collected at

Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy and to prove A's complicity in it although he may have been ignorant of all them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it. Mr. Beechey's chief points in connection with this section are (1) that the words "reasonable ground to believe" in the first line are equivalent to "proof"; (2) that the illustration to the section is inconsistent with the section; (3) that to interpret and apply the section we should have recourse to English Law. As to the last point all I need say is that I am aware of no authority in support of it. On the other hand, the learned authors of Amceri Ali and Woodroffe's "Law of Evidence applicable to British India" give the opinion that section 10 aforesaid is "wider" than the English Law; and it seems to me clear that the India Legislature intentionally departed from the English Law, for otherwise to take one test, why should it have used the phrase "*in reference to their common intention*" instead of "*in execution or furtherance*" of the common purpose? I intend, therefore, to interpret the section upon its own plain phraseology and upon the *dicta* of Indian authorities expressly dealing with it. Incidentally Mr. Beechey tried to make us see how much more fair and just the English Law on the subject is, but it is obvious that this is not a matter on which we are called upon to give an opinion. As regards (1) above, I do not agree with Mr. Beechey, for I perceive a difference between reasonable ground to believe a thing and proof of that thing. In the present case, however, I need not pursue the matter because it is to me clear, as will be seen later, that the prosecution has produced *prima facie* proof of a conspiracy to commit murder and that the six appellants were one and all members of that conspiracy, and thus under section 10 anything said, done or written by any one of the conspirators, whether accused or not, in reference to the said common intention, *after that intention was first entertained by any of them*, is a relevant fact against each and all of the accused, as

well for the purpose of proving the existence of the conspiracy as for the purpose of showing that "any such person" was a party to it. I am, however, inclined to agree with Mr. Beechey as to point (2), in support of which he quoted 14 Calcutta Weekly Notes, 1115. The way that the words "and to prove A's complicity in it" come into the illustration are not quite in accordance with common sense or with the section as I read it. I am unable to see how what B did in Europe and C in Calcutta, and so forth, can *per se* possibly touch the question of A's *complicity*. A's *complicity* can, from the nature of things, only be shown by A's acts, or, A being otherwise shown to be a member of the conspiracy, by acts of B, C, and so forth, implicating him. *Other* acts of B, C and the rest seem to me capable as regards A, only of adding proof of the existence and nature of the conspiracy. At the risk of being tedious I must give an illustration to explain my view. In the case given in the illustration, if B in ordering arms in Europe tells the manufacturers to send the bill to A. or to consign the arms to him, this, if A. is otherwise *prima facie* shown to be member of the conspiracy, would be relevant both as to the nature of the conspiracy and as to A's complicity; but if B does not mention A. and A's name in no way comes into the business of ordering arms in Europe, how can it be said that B's ordering of arms there can produce in the mind of the Judge any added conviction that A was a member of the conspiracy? Of course, in framing a law the Legislature *can* lay it down that any given thing is "relevant" for the purpose of proving such-and-such; but I think I am justified in rejecting the idea that the Legislature intended, by a provision of the law of evidence to create a barren, useless and merely nominal relevancy. Anyhow one sees, after an analysis of this kind, that the question is not very important; it seems not to matter much whether a thing is technically "relevant" against A or not, if, as a matter of fact, from the nature of things, it cannot of its own force help towards the conviction of A.

The above remarks contain all the rules and principles I wish to lay down as to section 10. Mr. Beechey *per contra* quotes Russell on Crimes, 6th Edition, Vol. I, page 528, last para., and Taylor on

Evidence, 10th Edition, Vol. I, page 420, para. 594. I have no quarrel with these statements of the law of England, but section 10, Indian Evidence Act, deliberately parts from that law. He then refers us to the well-known case Pulin Behari Das *v.* King-Emperor and especially certain *dicta* of Mukerjee, J., at page 1152, *et seq.* After reading those passages I am unable to see that the learned Judge's views really differ from mine. I quote two important *dicta* with which I fully agree, the first especially though indirectly supporting me in my earlier remarks regarding contents of indictment, namely :—

"It is, of course, not necessary to establish by direct evidence that the accused persons did enter into such agreement ' (i.e., agreement to commit an offence)—page 1151; and

"Hence, as soon as it is shown with regard to an individual accused that he was in privity with the combination and its object and had adopted the acts already performed, he as a conspirator becomes bound by the antecedent and the consequent acts of his conspirators "

Mr. Beechey's next citation is Kadambini Dassi *v.* Kumudini Dassi, I. L. R., 30 Cal., 983, a ruling with which also I am in accord but which hardly helps one way or another here, the Court finding that there was no issue before it as to the existence of a conspiracy and no "reasonable ground" for believing that either of the persons concerned was a party to it.

I now turn to the question of the value of an accomplice's evidence and the amount and nature of the corroboration the law expects of such evidence. No lengthy discussion is necessary. I take my stand upon section 133, I. E. Act, and section 114, Illustration (b), and the provisos to that Illustration. In this case, under section 133, the approvers Dina Nath and Sultan Chand, of whom we shall hear more later, are "competent" witnesses against the accused persons, and a conviction based on the uncorroborated evidence of either of them would not be illegal "merely" because of want of corroboration. As to section 114 the important point for us here is that the section says "may presume," as to which see section 4 of the Act. Notwithstanding section 114 and Illustration

(b) the Courts are not tied down in any technical way, but it is their duty, when deciding (i) whether any corroboration of a particular accomplice is required, (ii) what amount or kind of corroboration is required, to look at the question as a prudent man, desiring to avoid error and to arrive at the truth, would look at it. In the present case, as I hope to make quite clear later on, a prudent man should have no difficulty in finding that Dina Nath's story and Sultan Chaud's story are substantially true, though necessarily in many points uncorroborated.

These questions have been very frequently argued before Benches of this Court, but in order to refresh my memory of the case-law on the subject and to ponder well the reasoning adopted by Mr. Sen (for accused Basant Kumar Biswas) and other Counsel, I have carefully studied the authorities they have cited—see margin. Of

14 P. R. 1874 (Cr.).

5 P. R. 1902 (Cr.).

28 P. W. R. 1907 (Cr.).

36 P. W. R. 1910 (Cr.).

19 P. W. R. 1912 (Cr.).

19 P. L. R. 1911; I. L.

R. 29 Cal. 782 (at p. 787).

I L.R., 10 Cal., 970 (pp. 973, 975).

all these in my opinion the first is most valuable, see especially the para. beginning at bottom of page 44. The head-note in 36 P. W. R., 1910 (Cr.) is misleading, as it goes far beyond the judgment and sets aside section 133, I. E. Act, altogether : and the dictum in 19 P. W. R. 1912

(Cr.) must be read as applying to the peculiar facts of the case. In many of these cases stress is laid upon the *practice* of the Courts according to which corroboration is *always* required ; but the *law* is as I have stated it, though of course in 999 cases out of 1,000 prudence does require that there shall be corroboration. As to the extent and nature of such corroboration no hard and fast rule can be stated.

It is convenient here, even at the expense of still further postponing statement of the facts of the case and discussion of the evidence, to dispose of various minor points of law raised before us. Mr. Raghunath Sahai (for Amir Chaud) contends that the pardon granted to Dina Nath approver was illegal and, therefore, his deposition is not admissible in evidence. I have no hesitation in rejecting this contention. The learned gentleman refers us to section 124-A, I. P. C., section 337, Cr. P. Code, and section 124-A., I. P. C., in Schedule II of the latter Code, and argues that, as the Committing

Magistrate at the time of the offer of pardon, was enquiring into an offence under section 124-A. aforesaid, which is not "triable exclusively by the Court of Sessions or High Court," section 337, Cr. P. Code, could not be used at all. It is sufficient to point out that the Magistrate was also dealing (admittedly) with an offence under section 302 and section 120-B., I. P. C., and that the case as a whole was undoubtedly one exclusively for a Sessions or High Court. The use of section 337, Cr. P. C., was, therefore, not illegal.

Next, the same Counsel suggests that, as in reality the evidence, if it proves anything, proves a conspiracy to wage war against the King (section 121-A, I. P. C.), therefore the sanction of Government was necessary before prosecution and this had not been obtained. This suggestion I repel with confidence. The Sessions Judge has not "taken cognizance" of any charge under section 121-A, I. P. C., and this disposes of the objection.

Again, the same Counsel argues that the evidence purports to prove the existence of one conspiracy to murder and another for the dissemination of seditious literature, and also that there was one Lahore conspiracy and another Delhi conspiracy, and that in the present trial only those accused can be convicted who are proved to have joined that conspiracy *to murder* in pursuance of which Ram Padarath was murdered at Lahore. 15 C. W. N, 593 (The Emperor *v.* Nani Gopal Gupta and others) is cited in support, especially the *dictum* that where several persons are charged with the same conspiracy, it is a legal impossibility that some should be found guilty of one conspiracy and some of another; and that any accused not shown to be a member of the conspiracy charged is entitled to demand an acquittal, however bad his record may be, and however much he may be suspected of another offence not actually charged. The contention is that Amir Chand at least is not directly shewn, even if all the evidence against him is believed, to have conspired to do anything more than disseminate seditious literature. It will be seen, however, when I go into the facts, that there was really only one conspiracy, though it may have had two

objects, *viz.*, to commit murder and to cause disaffection by circulation of seditious literature ; and thus the argument falls to the ground.

Here I may notice another contention, in support of which another passage (at p. 606) in the same judgment of Jenkins, C. J., is relied upon that the murder of Ram Padarath, unfortunate victim of the Lahore bomb, said to have been thrown or placed by accused Basant Kumar Biswas, should not have been imported into this case, as it should form the subject of a distinct trial of that accused under section 302, I. P. C. This contention seems to me not only unsound, but to be based on a misapprehension of what the learned Chief Justice meant. What he described as inexpedient and not to be commended was the attempt of the prosecution in that case to prejudice the Court against accused persons and to *protract enormously*

* This is apparently what vexed the Court most—D. C. J.

*the proceedings** by compelling the Court to hear over again, in the conspiracy case, several cases of dacoities, said to be due to these same conspirators, which had been already severally heard and disposed of previously. Whether the remarks made by the learned Judge are sound or not, I leave the matter with the two observations that evidence of the murder of Ram Padarath being clearly relevant, the Sessions Judge *could* not exclude it, and that there is no question here of hearing over again a case of murder already adjudicated upon.

Turning to the merits of the case one cannot help seeing that the most important matter for consideration is the evidence of Dina Nath, P. W. 3, the approver, and the questions that here arise are—Is his story substantially true? Is it materially corroborated? Apart from corroboration by independent evidence, does it contain in itself intrinsic indications of its truth? How much of it can be safely and properly taken as true against this or that accused person and so be used as part of the material for the conviction of that person? It should be noted here that Dina Nath has nothing to say against Hanwant Sahai, appellant, and practically nothing against Charan Das, respondent.

I will first consider the question of the value of Dina Nath's evidence taken by itself apart from direct corroborative evidence. We have heard this argued repeatedly during the proceedings and it has been constantly present in our thoughts; and for myself I can say that the more I have studied the deposition of this man and compared it with the statements made before Mr. Toliinton, Deputy Commissioner, Lahore, on 24th February 1914, *i.e.*, 8 days after the arrest, and before the Committing Magistrate, the more has the conviction been forced upon me that the man, unsatisfactory though his character may be, suspect though his word as the word of a self-confessed conspirator and traitor may be, did really try to give a truthful account of the whole of his dealings with his fellow-conspirators. The tale is so long and deals with such a variety of incidents and persons spread over so long a period of time, that one would have to credit him with an almost superhuman power of memory and mental concentration before one could hold that he was repeating a concocted story. His unsuccessful scholastic record shews that there is no ground whatever for supposing him possessed of unusual intellect or memory, and it is safer to attribute to him an ordinary brain and an ordinary retentiveness of memory, sufficient to enable him, under the stimulus of danger—for he knew his pardon depended on his telling the truth—to tell with substantial accuracy *things present to his consciousness as having really occurred*, but hardly sufficient to enable him to keep arranged in his brain, under the stress of examination and very strenuous cross-examination, the enormous mass of details we find in his evidence, *if those details were fabrications*.

It is difficult to decide what passages in his deposition to select in order to illustrate the above observations, for the greater part of it affects my mind in this way; but I may perhaps fairly refer to the first half of p. 13 of the "Proceedings of the Sessions Court," the last half of p. 14, the first half of p. 15, the middle of p. 17, and so on.

Another thing that strikes one in reading the deposition of Dina Nath, is the *restraint* of the man in his statements against his fellows. Time after time in his story he *could*, and we may fairly assume

would, if he had been telling a tale manufactured in consultation with the police, have said damning things about them, where he has not done so. One instance is at p. 16, lines 30—32, and another at p. 14, lines 45—54, and these could be multiplied. The latter instance prompts a few words. Balraj, appellant, is a man against whom, as regards events before the murder of 17th May 1913, the prosecution have admittedly little to go upon. If Dina Nath had been an unscrupulous police witness, would he have been content to say Rash Bihari introduced him and Balraj to each other as “good men” and that there was only an “ordinary conversation”?

But it is said that comparison of Dina Nath's three recorded statements shews such discrepancies as point to a clear attempt to “improve” the story. We have listened patiently and carefully to much argument on this point; but on the whole I find myself in agreement with the Lower Court that none of the discrepancies is really of importance except when Dina Nath attempted in his earlier statements to screen his cousin Ram Sarn Das and his distant kinsman Jagannath, of Kapurthala, who he says printed the May “Liberty” leaflets. Now there are falsehoods and falsehoods. There is a kind of falsehood that damns a whole deposition and there is a kind that does not; and this is one of the latter kind. Indeed, it was not a *positive* falsehood at all, but merely the omission of names of persons upon whom Dina Nath naturally did not want to bring possible trouble; and I wish here to advert to some acute observations of Mr. Ross Alston's, namely, that the defence theory that Dina Nath only named his kinsmen when the police discovery of them forced him to do so, is refuted by the facts, for the police did not go to Kapurthala in search of those men until after he had told Mr. Stead. Dina Nath says he told Stead and the latter was not cross-examined about it. As to this see statement of Dina Nath to Committing Magistrate on 27th March, p. 40, and to Sessions Judge, foot of p. 36, and P. W. 37 in Sessions Court; shewing Sessions Judge is wrong, p. 12 of judgment, when he says police first knew on 28th. On 27th March Dina Nath had given names to police, but was kept off giving them in open Court lest warning should reach

Kapurthala. I will now note some of the so-called discrepancies on which appellants' Counsel have laid stress and shew how insignificant they really are.

To Mr. Tollinton Dina Nath said, p. 2, he went to the station in October 1912 to meet Rash Bihari but arrived too late. To Sessions Judge, p. 15, he said, lines 20—22, that he did not go, and he confirmed this in cross-examination, p. 35, lines 15—19, and my own view is that in all probability Mr. Tollinton misunderstood. Incidentally I may remark that this detail of *not* meeting Rash Bihari at the station, having been asked to do so, is another of those details which go to show the good faith of the narrator.

Next, Dina Nath does not describe in exactly the same way how many days after Rash Bihari in October 1912 came to Lahore Dina Nath first saw him. There is no real contradiction and the matter is infinitesimal.

Thirdly, before Mr. Tollinton Dina Nath said nothing about Abad Bihari *writing* the leaflet, but introduced this before the Committing Magistrate on 27th March 1914. This is true, see Committing Magistrate's Printed Proceedings, p. 40. This is certainly a fair point; but it must be remembered that before Mr. Tollinton Dina Nath was making a statement unexamined, while on 27th March 1914 the examination was being conducted by an advocate. Mere *deficiencies* in the earlier statement therefore are not specially important. Apparently nobody asked him on 24th February 1914 if he knew who composed the leaflet: if the question had been put and he had said he did not know or had given a name other than Abad Bihari, the matter would have been different. Further, he was never asked in the Sessions why he had not mentioned the matter to Mr. Tollinton.

Omitting infinitesimal points such as the non-mention before Mr. Tollinton of wrapper round the leaflets, fourthly, it is pointed out that before Mr. Tollinton, pages 3 and 4, Dina Nath did not mention Basant Kumar Biswas as taking part in the distribution of the May leaflets, while in Sessions Court, p. 17, lines 51 and 59, he brought

him into this affair. One can only repeat the remark under "thirdly" above. The part assigned to Basant Kumar was insignificant and this, with the absence of questioning, fully accounts for the difference. To Committing Magistrate Dina Nath did mention Basant Kumar.

Fifthly, it is said that Dina Nath told Mr. Tollinton that Abad Bihari said he and Basant Kumar fitted up the bomb in the gardens, while in Sessions Court he said Abad Bihari alone did the fitting up. In reality to Mr. Tollinton he said, repeating Abad Bihari's story, "They had gone to a dark spot under the trees and fitted the bomb together." This does not mean that Basant Kumar actually joined with his own hands in the work of fitting up the bomb, and so there is no discrepancy at all.

Sixthly, to Mr. Tollinton Dina Nath said Abad Bihari and Basant Kumar were to meet at 7 at the gardens; to Sessions Judge he said between 7 and 8. Is this a serious discrepancy? I say unhesitatingly no.

Seventhly, Dina Nath made no mention of the July leaflets to Mr. Tollinton. This is natural, see p. 20, line 19, Sessions Printed Proceedings, for Dina Nath had nothing to do with their distribution.

Eighthly, there are certainly differences between Dina Nath's different statements as to when Abad Bihari came to Lahore in October 1913, but I think the learned Sessions Judge's way of looking at the matter is reasonable.

Ninthly, to Mr. Tollinton nothing was said about the Kali Bari meeting with Rash Bihari in end of 1910, p. 14 top. The explanation is that nothing turns on this meeting, no accused having been present at it and nothing of importance occurred at it; and similarly the omission before Mr. Tollinton to mention a certain meeting with Amir Chand, p. 13, line 47, has no importance whatever, likewise the omission of mention before Mr. Tollinton of his seeing Basant Kumar at Dehra Dun at Christmas 1911, p. 15, line 12.

Tenthly, much is made of the fact that at the Agarwal Ashram meeting in October 1912, Dina Nath says to Mr. Tollinton, p. 2,

towards bottom, that Rash Bihari said the terrorist movement of Bengal should be instituted in the Punjab, while to Sessions Judge he said, p. 15, lines 36 to 45, that the words "terrorist" and "anarchist" were not used but "advanced propaganda." This is a good illustration of the straits to which the defence is reduced for arguments. To Sessions Judge Dina Nath, line 50, goes on to say—"we began discussing it at once, that a man for throwing bombs must be selected and tested," etc. To Mr. Tollinton Dina Nath merely said *in a compendious way*, "terrorist movement of Bengal," the two statements are therefore the same.

Eleventhly, it is said that Dina Nath and Chatterjee contradict each other about the *letter* of introduction of Rash Bihari to Dina Nath. They do, but not about the introduction itself; and in my opinion comparison of Chatterjee's deposition (P. W. 199) with Dina Nath's very strongly confirms the latter's good faith.

Many more such points were raised before us, but I am not called upon to mention them all in detail. I have mentioned a large number to show how trivial the objections raised really are, and their triviality and easy refutation are a strong confirmation of the view that Dina Nath has made these long and detailed statements so substantially in conformity with each other that his good faith is thereby much confirmed. If we add to this the circumstance that Dina Nath, arrested on 18th February 1914, made his statement to Mr. Tollinton on 24th and that in it he told very many things that could not then have been known to the police but were afterwards verified; if we also reflect that, notwithstanding the strenuous efforts of ingenious Counsel, it is fairly clear that in no instance has Dina Nath attributed to any one of these conspirators, who seem to have led somewhat peripatetic lives, presence in Lahore or elsewhere at times when they were elsewhere. I think it is a fair deduction that it is proved *prima facie* that Dina Nath's story bears the stamp of truth. No doubt according to the authorities corroboration is required, but the case must now be treated on the basis that *prima facie* the statements of Dina Nath are not suspect in themselves.

I will now touch upon one other main feature of the defence, which affects practically all the accused, though it was argued in detail only by Mr. Sen, namely, the contention that Rash Bihari was a police spy and an *agent provocateur* and that a good deal of the documentary evidence against the accused, especially such of it as came into existence shortly before the arrests, was deposited by him with this or that accused by way of manufacture of evidence against them. I have carefully considered this defence and so has my learned colleague, and, as he is making it an important part of his judgment, in the statements and views expressed in which I heartily concur, I will refrain from discussing it at length and will merely note here that I reject the theory put forward as unproved and inherently improbable to the verge of impossibility.

I will now discuss separately, always bearing in mind what I have already written, the case against each accused individually. I will take them in the order in which they were discussed before us. The learned Sessions Judge has treated more or less together the cases of (i) Abad Bihari and Amir Chand, (ii) Balraj and Balmo-kand. I do not think in doing so he has been unfair to any of them; but, as Mr. Beechey has complained of the method as prejudicially affecting his client Balraj, I will take each accused separately, though this may involve some repetition.

ABAD BIHARI.

As to this man the learned Sessions Judge, page 59 of
*Sessions Judge says
 12 facts, but he has coun-
 ted the matter of leaflets
 twice. Judgment, after marshalling against him eleven
 "facts"* holds it

"Conclusively proved that he was not only one of the managing com-
 mittee of the conspiracy, but the most active member in every department,
 that he arranged and superintended the throwing of the Lahore bomb and
 organised the work from the beginning".

Later, in deciding the appropriate punishment for this man, p. 74, the Sessions Judge sums up again thus :—

"Abad Bihari is only 25 years of age, but he is a highly educated and intelligent man who was used as no man's tool. From the beginning he was an active member of the committee, and, in fact, the most active. He arranged, and was consulted in, everything. Though he did not himself place the bomb, preferring to employ Basant Kumar Biswas for this dangerous feat, he put it together and then directed his agent what to do. He organised the campaign of leaflets, which was meant to bear fruit in murders and crimes. He was in possession of the Poison Manual, to mention one document only. He was an accessory to the presence of the bomb cap in Amir Chand's house. If any man ever earned the full penalty which the law prescribes, it is he."

With every word of the above quotations I am in full accord. They are based on 11 "facts," which I may summarise as follows :—

- (1) Intimate acquaintance admitted between Abad Bihari and Amir Chand: *cf.* Abad Bihari's own written statement, p. 306, lines 24, *et seq.*
- (2) Intimate acquaintance between these two and the fire-brand Hardayal and the latter's cousin, Hanwant Sahai, accused.
- (3) The unfortunate youths Sultan Chand and Ram Lal were being brought up by these men as seditionists and "patriots".
- (4) Intimate acquaintance with Ganeshi Lal Kaistha, ex-Editor of the "Akash" (proscribed paper), whose works they studied.
- (5) Connection with issue of leaflets.
- (6) Amir Chand, proved friend and guide of Abad Bihari, wrote revolutionary and criminal pamphlets, etc.
- (7) Bomb cap found in Amir Chand's house, where Abad Bihari lived and kept his belongings.

- (8) These two used same press as the Raja Bazar conspirators and the same type-writer.
- (9) Stage management of Lahore bomb outrage.
- (10) Abad Bihari's visit to Lahore in October 1913 to fetch away one of two bombs in possession of Basant Kumar.
- (11) Intimate friendship with Rash Bihari, who put up with him in Delhi, left his property with him for custody and by his invitation took all his meals with him at Amir Chand's house.

Abad Bihari appears on the scene first at Amir Chand's house in 1908, see Dina Nath, p. 13, line 36, as a guest along with Dina Nath, Chatterjee and others. Before this Hardayal had completed his evil work in India and had made over his disciples to Amir Chand. Then we have the Agarwal Ashram meeting in October 1912, page 15, at which were present Rash Bihari, Dina Nath, Balmokand and Abad Bihari, and at which the secret society for sedition and murder was organised, Abad Bihari to be head for U. P. and Punjab, and Balmokand and Dina Nath for Punjab and especially Lahore.

There is no corroboration of a direct kind of this meeting and framing of organisation; but there is ample proof that Rash Bihari did come to Lahore about that time, see Exh. P. 108-H, letter from Rash Bihari of 27th September 1912 to Charn Das, para. 7; P. 108 of 5th October 1912, ditto; P. 108-G. of 17th October 1912, ditto; reply to last-named letter P. 154-L., dated 20th October 1912 (which was never despatched and was found on search of Charn Das's house); P. W. 79, Jagdish Ram, p. 169; P. W. 80, Manni Ram, p. 170. We have heard a good deal of controversy as to the dates of Rash Behari's visit: but examination of the materials available makes it clear that he arrived in Lahore on 13th October 1912 and left on 17th.

This is a convenient place for consideration of the question of the nature of the secret society to which the accused belonged. As stated earlier in this judgment it has been urged that, if there was conspiracy at all, there was one conspiracy to disseminate seditious literature—not charged specifically in this case—and another to commit murder and that this and that accused can at most only be

*EVIDENCE IN RE
HARDYAL.*

1. Dina Nath, pp 12, 13, 31 (top), 32 and 33 (*passim*), 47 and 48 (cross examination by Mr. Ruit Ali) —

2. Ex. P. 23 A 1.

3. P. 23 D.

4. " E 1.

5. " L.

6. P. 24 O 3.

7. P. 24 O 4.

8. P. 32 C.

9. P. 32 H 1.

10. " K 1.

11. " L 1.

12. " L 2.

13. " M.

14. " M 1.

15. " M 2.

16. " M 3.

17. " N 2.

18. " O 1.

19. " P.

20. " S 2.

21. P. 47 A.

22. P. 176 A.

23. P. 177.

24. A.

25. P " 178.

26. " A.

Only (1) to (10), (17), (18), (20), (21) and (23) are strictly in point here.

Nos. (1), (7) and (23) are copies of the *Ghadr*. See p. 3 of (7) questions 4th and 8th, and of (23) p. 2 bottom, p. 5 middle, etc.

Then Dina Nath's evidence shews clearly enough that bomb throwing was plainly discussed in October 1912, and I believe his evidence. The persons then present clearly joined, or had already joined, a conspiracy with two objects, one of which was murder. Then we

Ex. P. 85 A.

" 13 A.

" 13 B.

" 13 C.

found guilty of belonging to the former. But a review of the whole of the evidence refutes this contention. Hardayal, said to be a brilliant student, busied himself in 1907 and 1908 with spreading "propaganda for the independence of India. There is no direct evidence that at this early stage he advocated assassination: but we can fairly look at his whole record—see margin—and at the evidence of Mr. Ise-monger, P. W. 177, as to his connection with the *Ghadr* in order to see what his ideas and ambitions were; and I think that it is not unfair to infer from the subsequent actions of his followers—Amir Chand, Abad Bihari, Rash Behari and others—that he also was never averse to employing even murderous methods to overawe the Government of India. In my opinion the copies of the *Ghadr* paper on the record shew that his ideas frankly included murder among the means the "patriots" should employ to attain their ends, as the passages in them noted in the margin shew. Then we come to the "Liberty" leaflets, of which there were four—see margin—and no one can possibly read them without seeing that they openly advocate assassination of Europeans and

Government officials. There is in them, as in most of the literature on the record, much wild and whirling talk ; but their real purpose is clear from the praises lavished on miscreants such as Khanaya Lal Datt, Madan Lal Dhingra and Khudi Ram Bose—see Ex. P. 85-A, P. 13 B. and P. 13 C. especially—and from the suggestion that the abominable outrages of Delhi, College Square (murder of a Head Constable), and Mymensingh (murder of a Police Inspector)—see p. 299 of the Sessions Printed Record, evidence of Mr. Denham—were worthy of imitation. Many other pieces of evidence might be here appealed to, but the above are sufficient.

In pursuance of this conspiracy the murder of 17th May 1913 was certainly effected, whether the Delhi outrage was so or not. As to Delhi all we have to go upon is that Abad Bihari, a Delhi man, who in those days belonged to the Lahore Central Training College, was in Delhi when the Viceroy's life was attempted, and that Basant Kumar, employed in Lahore in the " Popular Dispensary," had left Lahore, according to Dina Nath and according to his own admission, for an unknown destination a few days before ; and also that, on Abad Bihari's return to Lahore early in January 1913, Dina Nath had with him a conversation, Abad Bihari's part in which lays him open to most injurious suspicions. However, I do not wish to lay stress on this, for the Delhi outrage is not charged and the matter is merely one of suspicion. But as regards the Lahore outrage Abad Bihari is up to the neck in it. I will discuss it at length in connection with Basant Kumar, and it will be seen how strong the case is. It follows, then, that there was a conspiracy to commit murder, and that in pursuance of it a murder was actually committed. All persons proved to have been members of that conspiracy on or before 17th May 1913 have therefore rendered themselves liable to the extreme penalty of the law.

But this is not all the evidence against Abad Bihari, for he was undoubtedly mixed up with the concoction and distribution of the " Liberty " leaflets. Dina Nath says the original of the May leaflet was in Abad Bihari's own hand, and I see no reason to doubt

this statement. He tells the whole story at p. 17 of the Printed Sessions Record, and it carries conviction with it. It has been attacked in various ways, but I am firmly of this opinion. Then we have the July leaflets, on which not much need be said, the conversations about Mr. Gordon, Sir James Meston and the proposal to kill the Viceroy at Kapurthala. I see no reason to doubt the substantial correctness of Dina Nath's evidence on these subjects, but I do not wish to lay much stress on them, as the case against Abad Bihari is otherwise sufficiently established. But I must insist upon the importance of the evidence regarding Abad Bihari's visit to Lahore in October 1913 to fetch away one of the bombs Basant Kumar had been keeping. This story I hold clearly proved, and I adopt generally the learned Sessions Judge's views regarding it—see his Judgment, p. 49, last column, and pp. 58 (bottom) and 59 (top). Of course, no witness but Dina Nath can speak of the actual handing over of the bombs by Basant Kumar to Dina Nath and by him to Balmokand or of the visit to the sick Balmokand, after Abad Bihari's arrival, to get a bomb from him. Conspirators of this kind do not call in outsiders to witness their acts; but the coincidence of Balmokand's illness—he admits he was ill at the time this visit is said to have taken place—and the matter of the purchase of books by Abad Bihari from Rama Krishna in those days are to my mind confirmation strong as Holy Writ. Abad Bihari denies visiting Lahore at all then, and therefore, as I hold he did visit Lahore, he is precluded from pretending that he was there for some innocent purpose. The prosecution is fully justified in asking us to draw from his false denial the inference that the object of the denial was to hide something extremely unfavourable to himself. No lengthy argument is required to show that the matter of the prescription as the cause of the handing over of the bombs is adequate reason for the act; and it is extraordinary confirmation that Dina Nath should have hit off the very day of the trouble about the prescription.

Again, we have the November leaflets, the conversation regarding the proposed throwing of a bomb in a Christmas dance in Lahore, and what was found in Abad Bihari's house (P. 3 and P. 39

and P. 45) in Delhi by the police on 16th February 1914 and in his box in Amir Chand's house (P. 53). I do not wish to enlarge upon the first two of these matters; but a few words as to the last are necessary. The incriminating documents mentioned in P. 53 were found in a box placed on the first floor of Amir Chand's house on a balcony (*chajja*) some 14 feet from the ground, access to which was possible only by ladder or climbing or through the house. The box was unlocked, and we are asked by accused's Counsel to hold it possible, and even probable, that Abad Bihari was not aware of the presence of the papers there and that they must have been placed there by the police, or Rash Bihari (in the character of a police agent), or by some enemy. I reject all these solutions. These papers are quite in keeping with Abad Bihari's views and with other literature owned and even written by him; the search was carefully made by responsible officers and I decline to believe in their conniving at substitution or any sort of trickery; and I have already disposed of the theory of Rash Bihari as a police spy.

Lastly, I advert to Sessions Judge's "facts" (1), (2), (3) and (11), regarding which there can be no doubt. In Abad Bihari's house was found an atrocious document—P-4—in the handwriting of Ram Lal, lying openly on a table and apparently written there.

I repeat that the charge against Abad Behari is proved to the hilt. I have carefully weighed each and all of the arguments of Counsel touching him and find them all wanting. It is obviously impossible in a case like this to notice in the judgment and to refute each and every contention, or to describe each and every document produced; but I will now deal with a few objections which were most strongly pressed, by way of shewing how strong the case for the prosecution against this man is.

First, it is pointed out that Manni Ram, P. W. 80, pp. 170, 171, Sessions Printed Record, says he saw Raghbar Sharma, accused, and the original of the photograph P-118 (Rash Behari)

and a few more holding a conference at the Agarwal Ashram and none of the other accused was there. He cannot apparently fix the date better than "in October 1912" and it may well be that there was more than one conference. Again, evidently Dina Nath, who clearly knows of a conference there in October 1912, was not at this one, for Manni Ram does not mention him. There is therefore no contradiction.

Secondly, see p. 15, lines 24-27 and p. 35, line 51 : it is said that this Daulat Ram is a myth, but see what Dina Nath really says: "*He* (Balmokand) *said* that a friend of mine Rash Bihari Bose 'had come and wanted to meet me and told me where he was 'stopping, *i.e.*, in the house of a boy whose name was, *I think*, 'Daulat Ram.'" I can see nothing suspicious in the circumstance that Dina Nath could not recognise any Daulat Ram—he had apparently not *seen* the real Daulat Ram at all.

Thirdly, as to the posting up of leaflets Dina Nath says : P. 17, line 27, that Abad Behari was to do the posting in the Training College and yet none were found there, shewing Dina Nath is lying ; but the only inference that can logically be deduced from this is really that no responsible person found leaflets there and forwarded them to the authorities.

Fourthly, it is suggested that Dina Nath, in the first instance, anxious to keep out Ram Sarn Das's name entirely, substituted Abad Bihari for him and that really Ram Sarn Das did not only the printing but the writing and distribution of the May leaflet, the suggestion being strengthened by the circumstance that Ram Sarn Das in those days was working at the Dyal Singh College in Lahore—Dina Nath, p. 51, bottom, and Puran Chand, P. W. 197, p. 288. All I need say is that there is not a particle of proof of the suggestion.

Fifthly, four copies of the May leaflet were found on 4th May 1913 in the Dyal Singh College compound ; suggestion is that Ram Sarn Das was the most likely person to put them there. It is possible that he *had* kept a few copies and used them unknown to Dina

Nath. This does not help Abad Bihari. Nor do I think the fact that a few leaflets got out before the date Dina Nath gives as fixed for the publication at all important. It may well have happened through another conspirator without Dina Nath's knowledge

Sixthly, a difficulty has been raised by Mr. Nanak Chand about fitting in dates for Dina Nath's story of the May leaflets and the Lahore bomb outrage. He says that distribution took place on 10th and 11th May, that then Dina Nath says he wrote and told Rash Behari at Dehra Dun who replied, that he again wrote and received a reply, after which he and Abad Behari fixed 16th May at 5 p.m. for meeting to concert the outrage ; and he contends that all this correspondence could not have been crowded into so few days. There were 2 letters and 2 replies. But Dina Nath says 9th or 10th May was fixed for distribution, therefore he may have written to Rash Behari on 10th, or even on afternoon of 9th. Anyhow he says he got the first reply on 11th or 12th. After that there was ample time for another letter and another reply before the 14th or 15th—see p. 18 top. The difficulty vanishes.

Seventhly, Dina Nath says (p. 19, line 7) Abad Bihari told him it took half an hour at the Gardens on 17th May 1913 to get the bomb ready, whereas Major Turner, P. W. 12, p. 95, line 33, says the bomb cap could be fixed on in a minute. But how do we know there was not much more adjustment to be done than the mere fixing on of a bomb cap?

Eighthly, Mr. Nanak Chand asks why Abad Behari should go to the Gardens at all when Basant Kumar knew himself how to fix up bombs—Dina Nath p. 22, line 20 ; but he overlooks the fact that Basant Kumar may have learnt by December 1913 what he did not know in the previous May.

Ninthly, Mr. Nanak Chand argues that there is hopeless discrepancy as to the dates on which in October 1913 Basant Kumar is said to have handed the two bombs to Dina Nath and on which Abad Behari is said to have come to Lahore to fetch one and to have

left Lahore, *re infecta*. He fixes 9th October as first date because Dina Nath says "at Dussehra time," that being the big Dussehra day that year. To Mr. Tollinton Dina Nath said—p. 6, 12 lines from foot—that it was 15 days later that Abad Bihari came to Lahore : this would make it 24th October. To Committing Magistrate Dina Nath said—p. 46 of *his* printed proceedings—he took the bombs from Basant Kumar, kept them 3 or 4 days, and 6 or 7 days later Abad Behari came and went : this would work up to 18th, 19th or 20th October. To Sessions Judge—p 21, lines 40 and 55—he said he gave them to Balmokand after keeping them 3 or 4 days, and 5 days later Abad Bihari came and went : this works up to 17th or 18th. I am unable to see any importance in all this : Dina Nath, speaking 4 months afterwards, was vague in saying "15 days," that is all.

Here I may note that Mr. Nanak Chand notices a point which incidentally confirms Dina Nath's tale. The latter is explaining to Mr. Tollinton—middle of p 7—how Abad Bihari repaid him for the books Dina Nath had paid the price of to Rama Krishna and says Abad Bihari sent him money by money order *or* by registered letter. The police thereupon made enquiries of the Post Office and a registered letter receipt (P. 94)* was duly found, corroborating Dina Nath. Mr. Nanak Chand vainly tries to shew, by reference to P. W. 76, Sita Ram, that what went in the registered cover was not money but an examination supervisor's certificate. But Sriram Das, P. W. 154, to whom the certificate form should have gone, if that is the true version, was never asked by the defence if he received it. To me it appears extraordinary confirmation of Dina Nath's good faith that on 24th February 1914 he should have said "by money order or registered letter." He could not quite remember which. He must have known that, if the story was false, it would be proved so by enquiry at the Post Office. It is very improbable he would remember the arrival of a registered letter with certificate so accurately as to utilise the incident to cover a pretended remittance, and, if he did remember, would he have said *money order or* registered letter ?

*Not printed.

Tenthly, an absurd use is sought to be made of (p. 49, first 11 lines) the fact that Dina Nath's father and a friend Dogar Mal came to the Kotwali when Dina Nath was arrested on 18th February. It is suggested that these two gentlemen, the latter being forsooth resident *of the same district* as the Inspector who was investigating, plotted to get Dina Nath off. I merely mention the theory to reject it

Eleventhly, Chand Baba, P. W. 119, p. 215, who professes to identify Abad Bihai's handwriting on P-132 A to J, 23-C, 23-F and 93-B, is said really not to know his writing. This seems to me audacious ; the two men are first cousins and both of Delhi and they were at school together. This Chand Baba strikes me as a very honest witness ; why does he go against his cousin at all, or, if prevailed upon to perjure himself, why does he say so little ? The answer is, he is really saying only what he knows.

Twelfthly, it is argued that Abad Bihari had no connection with the 3rd and 4th leaflets. Whether there is or is not proof that he wrote or distributed or handled them, at least 37 copies were found in his box on Amir Chand's balcony.

Thirteenthly, Ex. P.7 is a note-book, admittedly of Abad Bihai's, containing a list of books, whereof the last nine (with prices) are noted as bought from the aforesaid Rama Krishna, and the last four are said to be those bought through, and paid for by, Dina Nath, in October 1913, when Abad Bihari came to Lahore. Prosecution use this to confirm Dina Nath who says four books costing Rs. 11 were bought, the figure agreeing with the note-book. Mr. Nanak Chand, on the other hand, argues that the ink and writing in P. 7 shew that all nine books were written down at the same time and that in reality all were bought at the same time, in December 1913. Rama Krishna, P. W. 116, does not help either side, and even if all nine books were entered up on same occasion, this does not shew they were bought on same day. The account given in the witness's supplementary statement does not help. Abad Bihari does not appear in it, and no doubt Dina

Nath did buy certain books in December *on credit*, the purchase for Abad Bihari in October was for cash.

I can find nothing further in Mr. Nanak Chand's criticism of the evidence. In my opinion rejection of his client's appeal is the only course open to us. He is a man deserving of no mercy or consideration.

The next appellant to be looked at is

AMIR CHAND.

Again, I can unhesitatingly concur in the summing up of the learned Sessions Judge, p. 61 of judgment.

"Not only do I find Amir Chand guilty of having been an active member of this conspiracy, but, considering his age and considering the facts that he used his undoubted talents in corrupting the young and adding recruits to the cause of anarchy, he appears to me to be a criminal, for whom nothing

whatsoever can be said, as being not only a* murderer on a great scale, but one who spent his life in furthering murderous schemes which he was too "timid to carry out himself." And again, at p 74.

"The case of Amir Chand is, if possible, worse than that of Abad Bihari. A man of 40 years of age filling a position of importance in the educational world at Delhi, respected and consulted by his compatriots, such

as Rai Bahadur Sultan Singh* no less than by the members of the Delhi Mission, a man who used his undoubted gifts and his influence over the young to train others and even his own adopted son* by means of the literature of anarchy

and crime, and not only this but a man, who assisted in the dissemination of the poisonous literature of this organization, and who

himself composed an article* advocating a wholesale massacre of Europeans; a man moreover, who allowed his house to be used as the general meeting place of disaffected criminals, and in whose possession a portion of a bomb was discovered. There is only one possible sentence for him also....."

As already stated the learned Sessions Judge has treated the cases of Abad Bihari and Amir Chand together, though he has

summed up against each separately. Of the 11 "facts" noted above against Abad Bihari, Nos. (1), (2), (3), (4), (6), (7) and (8) apply with at least as much force to Amir Chand, and I need say little more about most of them. No. (3), the infamous training of Sultan Chand and Ram Lal, tells most against Amir Chand, in whose house these victims of criminal influence long lived; of these Sultan Chand turned approver and *Ram Lal was made an accused but was acquitted, mainly on the grounds of his youth and of the doubt whether he had been fully initiated.* Sultan Chand's evidence—he is P. W. 201, and it is not pretended that he has any reason for speaking falsely against his adoptive father and his friend and the proof of the training of Ram Lal to be found in his history and in the atrocious thing he was made to write out, especially P. 4 already mentioned, prove "fact" (3) to the hilt. That and other documents give a very clear idea of the devilish ingenuity, of the methods adopted to warp and corrupt the youthful mind. Briefly stated the plan was first to appeal to the religious emotions, so near the surface in most Hindus, and to persuade the victim, by a perverted interpretation of Hindu ideas, that, if he committed a crime in furtherance of the designs of his teachers, that need not trouble his conscience, because all human minds were as it were a part of the Divine Mind, and so the act was really the act of God. The next step was, by travestying the history of British India and the present condition of it, to make the victim think that the present Government was an iniquitous Government, the cause of all the real and imaginary evils from which the country suffered—plague, famine, poverty, oppression—and that the only remedy was rebellion, boycotting and intimidation by murder, and that any one dying in such a cause was a martyr and a saint. Passing over (4), as the Sessions Judge has done, there is no difficulty in holding that (6) is fully established. It is only necessary to refer to P. 23-M. to prove the point. It was found in Abad Bihari's box in Amir Chand's house, and the handwriting is admittedly the latter's. It was never published and it was written in 1914, it is true; but I entirely reject as farcical the desperate attempt to explain it away by saying, as Amir Chand says, that it was written

in a moment of irritation and was not intended as an expression of the writer's real feelings. He says he intended to destroy it, but was unable to find it. This explanation is falsified by examination of the document, which was written in black ink and then successively corrected and "improved" in red ink and in pencil, showing that there was a serious purpose in it and that it was produced in its final form after at least three sittings. Though not published, it was evidently given to the pupil Abad Bihari, who must have read it. The violence of the language almost exceeds that of the *Ghadr*, for it abounds with phrases like these—

"The cursed foreign yoke of the English devils."

"The common foes of all Indians...sucking our life-blood."

"We are so many that we can seize and snatch from them their cannon."

"*Reforms* will not do. Revolution and general massacre of all the foreigners, especially the English, will and can alone serve the purpose."

As the learned Sessions Judge observes, such a document speaks for itself

As regards "fact" (7), not much need be said. The bomb cap was certainly found in a locked room at the top of Amir Chand's house, and I take it as proved, the search having been made by Mr. Petrie and with all care, that it was really found at the opposite side of the room from the hole in the wall and so must have been placed there by some one who entered by the door. The idea that this was done by a spy or police agent or enemy is absurd, and Amir Chand must be fixed with the responsibility. No doubt the top storey as a whole had been made over to Sultan Chand and his mother, but this room was locked and none of their property was in it, though a box of Abad Bihari's containing nothing in particular was there.

Expert evidence, especially P. W. 161 and P. W. 1 not criticised in arguments before us, proves point (8); and there remains, if any

more proof is required, the evidence of Dina Nath, and of the numerous witnesses named in detail by the Sessions Judge at pages 52 and 53 of his judgment. His view, in which I fully concur, is that this evidence fully proves Amir Chand's leading part in the conspiracy. It is impossible, and in an appellate judgment unnecessary, for me to restate all that these witnesses are supposed to prove and do prove: I indeed only say that my remarks below upon the arguments of Amir Chand's Counsel Mr. Raghunath Sahai, shew how futile are his attacks upon the strong fortress in which the prosecution are entrenched. We heard him for two whole days and gave the most earnest attention to his contentions.

First, he suggested that the document P. 23-M should be left out of our minds, but this is out of the question, for reasons I have already given.

Next, it is pointed out that, whereas Dina Nath at p. 13, lines 20 to 40, says Chatterjee told him in 1908 he was going to stay with Amir Chand and was actually at Amir Chand's house when witness went there, Chatterjee, p. 290, lines 30 *et seq.*, and p. 292, lines 24, 25, says he did not know Amir Chand before he went to his house and does not think he had ever heard his name. This is certainly a discrepancy, but only as to Dina Nath's saying that Chatterjee *told him* he was going to stay with Amir Chand. A discrepancy of so minute a kind in evidence given six years after the event does not strike me as important.

Thirdly, it is asked why was not Dina Nath's servant mentioned at p. 15, line 25, as the man who pointed him out to Balmokand, called to corroborate. A much more telling question is, why did not the defence ask Dina Nath the name and address of the servant and call him to contradict?

Fourthly, Counsel, tries to discredit Dina Nath by pointing to pp. 17 bottom and 18 (Dina Nath) and p. 177, 2nd para., and p. 179 (Fazl Karim), the latter denying receipt with the leaflets of an anonymous letter, which the former says he sent. The reply is that

the letter was probably just a slip and may have been overlooked, and any how the matter is insignificant. *What is significant is, how did Dina Nath, if he did not send the leaflets, know that Fazl Karim had received them?*

Certain other arguments like this really affect specially the cases of other appellants and will be noticed in dealing with them. The next criticism, fifthly, is connected with the 31d of November 1913 edition of leaflets. Dina Nath, p. 22, line 41, says these had no poetry in them, but p. 13-B. begins with a stanza. Again, an infinitesimal point : these leaflets were not distributed then, but in January 1914 along with the December leaflets, so that a slight confusion is natural enough.

Sixthly, advantage is taken of two remarks of Mr. Norton, P. W. 1, printing expert, at p. 11, lines 10 and 33. It is said that the *Om* leaflet (called 4th edition by prosecution) could not have been printed so early as 21st November 1913, for, he says, it was printed only "a few days" before his visit to the Press, his first visit being on 8th December 1913. I think "a few days" can easily be taken to cover 17 days, and further it is after all only an opinion of rather a hazardous kind.

Seventhly, see p. 51, line 33. "The parcel was closed when I gave it to Balraj." Counsel asks how Dina Nath could know what was in the parcel if he handed it over unopened and Balraj did not open it before him.- But Dina Nath says he had the parcel some days and does not say he never opened it during those days or saw the contents.

Eighthly, see p. 21, top—it is argued that Amir Chand was evidently not initiated at that time (end of 1913), for otherwise the project against Sir James Meston discussed between Abad Bihari and Dina Nath, would have been discussed also with Amir Chand. But that project had been perforce abandoned and why should it be discussed again?

Ninthly, it may be conceded that Amir Chand had no direct part in the meeting of October 1912, or the Lahore bomb outrage,

or the May leaflets ; but he was already an intimate friend and co-conspirator with the persons who engineered those things : and I also consider it of no importance that Amir Chand is not shewn to have had any personal acquaintance with Basant Kumar.

Tenthly, it is argued that evidence of conspiracy before October 1912 is irrelevant, because the case for the Crown is that then the conspiracy was formed. This is not so ; the conspiracy was *organised* then, and see the words in section 10, I. E. Act, " after that intention was first entertained by any of them."

Eleventhly, it is said that there is no proof that Amir Chand took over Hardayal's disciples. In my opinion, this is proved for all practical purposes by Dina Nath and Chatterjee (p. 290, lines 50-60) and by the circumstance of Abad Bihari's living in Amir Chand's house later.

Twelfthly, it is argued that Ram Lal's acquittal should lead to Amir Chand's absolution. One has only to read the evidence to see how absurd this is.

Thirteenthly, I have carefully examined the evidence beginning with Ex. P. 100 and the Exhibits of the 185 series produced by North-Western Railway regarding refund of price of railway ticket, Delhi to Lahore, and I can only reject Amir Chand's explanation that the ticket was for himself and not for Rash Bihari and that he missed his train. The story of the prosecution is that Dina Nath wired to Delhi from Lahore advising that Rash Bihari should not come at that time, that Amir Chand had bought the ticket at the City Booking Office for Rash Bihari, who would naturally not want to be seen there, and the wire led to the abandonment of the journey. It seems to me extraordinary that Dina Nath should in his long story have hit off just the days on which Amir Chand bought a ticket in an unusual way at the City Booking Office, and got a refund. I have no difficulty in accepting the prosecution theory of the incident. Counsel admits that Dina Nath, when making his statement, could not have known of the refund of the ticket money.

Fourteenthly, at this point Counsel was obliged to make several admissions—*e.g.*, that the whole of Sultan Chand's story, as told at foot of p. 53 of judgment, is true ; that the handwriting of Exhibit P. 12, etc., detailed at middle of same page is Amir Chand's : that Amir Chand and Abad Bihari were intimate friends ; and then he goes on to argue that Sultan Chand, P. W. 201, p. 296, line 2, says he got leaflets from Abad Bihari and kept it dark from Amir Chand shewing Amir Chand's innocence. But in dealing with Sultan Chand one has always to remember that he is the nephew and adopted son of Amir Chand, living in his house and apparently entirely dependent on him. Thus attempts by him to screen Amir Chand, however useless, are natural.

Fifteenthly, the whole of the evidence of Amir Chand's connection with Ram Lal is then discussed with a view to shewing that it was merely an innocent and philanthropic connection. It seems to me immaterial why Ram Lal left his home and came to Delhi: what we are concerned with is, how he was dealt with at Delhi and what was being instilled into his youthful mind. As to this the proof is overwhelming see *inter alia* Exhibits P. 4, P. 5 and P. 6 in Ram Lal's hand. No doubt these were found at Abad Bihari's house, but admittedly Ram Lal had lived in Amir Chand's house until just before his arrest.

Sixteenthly, a parcel, which Dina Nath says contained the third lot of leaflets, certainly came to him from Amir Chand. A parcel is admitted ; but it is said that it contained volumes of Swami Ram Tirath's works. Amir Chand's business books contain no entry of such despatch, but he says it was not customary to make entries regarding " presentation " copies. Here appellant falls into a self-constructed trap. The parcel was sent " bearing," which contradicts the idea of a present and incidentally appellant here admits friendship with Dina Nath, a thing which he elsewhere denies. The volumes of the Swami's works are a myth—see the

(1) Ram Lal's written statement, p. 337.

(2) P. W. 99, Hukm Chand, p. 197.

(3) P. W. 100, Nanoo Lal, p. 199.

(4) P. W. 170, Manak Chand, p. 261, line 28.

(5) P. W. 196, Shib Narain, pp. 286, 287, line 20.

(6) Amir Chand's written statement, para. 7, p. 310.

(7) Exs. P. 149-B and 150-B.

cross-examination of the witness D. W. 4, p. 366, especially lines 30 and 45. Amir Chand admits sending a parcel and it did *not* contain books. What did it contain? The only answer to this is, it contained what Dina Nath says.

Seventeenthly, Ex. P. 23-L is denounced as irrelevant, the prosecution can do without it.

Eighteenthly, I concede that the learned Sessions Judge has fallen into a few small errors, *e.g.*, where he says P. 7 was found in Abad Bihari's *coat*, and where he says the cases against him and Amir Chand are "very similar"—p. 59 of judgment—and where he says the witnesses were absolutely "positive" that there was no other box in room Z in Amir Chand's house when the bomb cap was found—p. 60 bottom, and P. W. 9, p. 87, line 7, and Brij Lal, P. W. 8, p. 81.

Nineteenthly, at this point Counsel made a most unfortunate point against his client. By way of shewing what a fine fellow Amir Chand really is, he pointed proudly to P. W. 107 and P. W. 110 and Ex. P. 212. Now, no doubt a good character vouched for by the two witnesses Canon Allnutt and Mr. S. K. Rudra is a valuable asset, but it must be borne in mind that "patriots" of Amir Chand's type are often, except in regard to the monomania possessing them, estimable men and of blameless private life; and the reference to Ex. P.-212 is most unfortunate. The writer, R. S. Narayana Swami, in extraordinary diffuse and ornate phraseology, is really only writing a business letter as to how much commission Amir Chand is to pocket. In doing so, he no doubt expresses profound admiration for the latter, but what kind of a man is the writer? At the bottom of the first page of the document will be found a reference to a lecture by the writer and that is to be found as Ex. P.-14 and P.-14 A. After reading that one is forced to the conclusion that to be praised as a patriot, etc., by the author thereof amounts in itself to a damning indictment. Incidentally this document P.-212, tells also against Abad Bihari, for the writer calls him "dear Abadji."

Twentiethly, it is urged that at the most Amir Chand only became member of conspiracy in November 1913 and then only of a conspiracy to disseminate seditious literature. In my opinion, however, the intimacy with Rash Bihari and Dina Nath and Hardayal, the harbouring of Abad Bihari, the training of Sultan Chand and Ram Lal, and the coming and going of conspirators in his house take Amir Chand's connection with the conspiracy back to a time much earlier and shew that he was a member even before October 1912. As he was then a member, under section 10, I. E. Act, all the acts of the other conspirators are evidence against him.

Lastly, I notice one legal argument specially appertaining to this part of the case. I. L. R., 41 Cal., 380, is invoked as showing that the finding of papers in Abad Bihari's box in closed covers is nothing against Amir Chand, but this argument ignores section 10, I. E. Act.

This long and tedious review of Mr. Raghunath Sahai's arguments has been undertaken in order that no point in favour of Amir Chand, or supposed to be so, should be overlooked. The result is damning. The man has fully earned the reward he has received.

The next appeal to be dealt with is that of

BALRAJ.

This young man, now about 24, partially passed the B.A. Examination in 1910 and apparently secured the degree the following year. I may state at once that, in my opinion, it is proved that he was a member of a conspiracy to commit murder; that in pursuance of that conspiracy the murder of May 1913 was effected, but that it is not proved that he was really a member until a later date. To my mind the law is not clear, but I am content to hold that under Section 120-B., I. P. C., he can, in the circumstances, be punished only under section 115 of that Code with 7 years' rigorous imprisonment as a maximum. There is no reason for showing him any indulgence, and, if my learned colleague agrees, I would sentence him accordingly.

I will here also notice the arguments of his Counsel (Mr. Beechey) on his behalf. He sketches thus the history of Balraj from 9th October 1912, before which date the only mention of him by Dina Nath is that he was present—that is all—when Rash Bihari came to Nabha House, Lahore, in the summer of 1911 :—Went on 9th October 1912 to Jodhpur as tutor to the Princes; reached 12th October, thus missing the Agarwal Ashram meeting. In 1913 went with the Princes and Mrs. Windham to Kashmir and stayed there till September 1913, thus missing the episodes of the May leaflet, the Lahore murder, and the July leaflet; on 15th September 1913 asked for a year's leave, joined the Government College: went on 1st October 1913 to Jodhpur, taking his sister, and returned on 10th October; went to Mussoorie on 21st November 1913 at invitation of General Partab Singh's son, Prince Narpat Singh—meeting him at Dehra Dun on 22nd and taking him up the hill, where he remained until 26th November; returned to Lahore 27th November, arriving with Thakur Indar Singh by Bombay Mail on evening of 28th; stayed at the house of his cousin Sheo Raj in Lahore until 13th January 1914, when he and the Princes and accused Balmokand, who had been tutor in his place, went to Jodhpur, whence he returned on 21st January 1914, and continued his studies till his arrest on 20th February. These dates are to a large extent proved.

First, Mr. Beechey points out that Dina Nath's saying he saw Balraj at Nabha House in 1911 is wholly uncorroborated, for Jagdish Ram and Manni Ram (P. W. 79 and 80) do not mention Balraj as being there; and that in October 1912 the only trace in the evidence as to Balraj is that Dina Nath says Rash Behari at the Ashram remarked that Balraj had gone to Jodhpur. In my opinion Mr. Beechey is justified in contending that this is hardly proof that Balraj was then one of the gang, for we are left in the dark as to the occasion for Rash Behari's remark. The learned Sessions Judge's way of putting the matter in last paragraph of p. 24 of his judgment is therefore hardly correct.

Secondly, Mr. Beechey has essayed to help his colleagues in the defence by a long series of arguments as to weak points in connec-

tion with the facts of the Lahore bomb outrage. I will not discuss these here, as I hold that there is no proof that Balraj had become a member of the conspiracy at that time or knew what was going to be done. In connection with the October 1912 meeting he was only mentioned as having gone away, and here he is brought in only in a very indirect and circuitous way, that is Girdhari Lal P.W. 40 said to Committing Magistrate the statement being brought on to the Sessions record (but denied to Sessions Judge), that Balmokand accused, in asking him to get employment for Basant Kumar Biswas, said Balraj had recommended him. In my opinion this statement of Girdhari Lal's is technically *relevant* against Balraj under section 10, I. E. Act, inasmuch as I am going to find Balraj was a conspirator, albeit he became one later on ; but I decline to hold on

such a tainted piece of hearsay* that Balraj is *proved* a conspirator in October 1912. Amar Nath, P. W. 38, p. 126, is taken by the Sessions Judge to be an honest witness, and he says, line 29, that Girdhari told him that Basant Kumar told *him* that Balraj had instructed him (Basant Kumar) to go to Lahore and get service. I do not think that even with this reinforcement the evidence can be said to prove Balraj at that time a member of a conspiracy to commit murder.

Thirdly, it is pointed out that Dina Nath, a head conspirator, never saw Balraj between summer of 1911 and September 1913, though the latter was in Lahore till October 9th, 1912, and it is argued that this is not what one would expect had Balraj been a conspirator.

Fourthly, the next mention of Balraj, it is shown, is also hearsay--p. 22, line 25, Balmokand telling Dina Nath that Balraj was now working in Lahore and saying that the trio should agree on some work and that Balraj had assented to the plan for throwing a bomb at the Viceroy at Kapurthala. As this is both hearsay and uncorroborated, it is urged that it should be entirely rejected ; but in my opinion it stands on rather a different footing from the earlier hearsay utterances of Dina Nath and Girdhari Lal, for here the

statement of the fellow conspirator was certainly in furtherance of the "common intention," whereas the other statements were at most only inferentially so. I take this as inconclusive standing alone, but at the same time as the *first* of a series of links connecting Balraj unmistakably with this criminal conspiracy.

Fifthly, I do not think much of the next point raised, which may be stated thus. Dina Nath says to Mr. Tollinton, p. 11, the conversation with Balmokand about the Viceroy and Kapurthala was some 15 or 20 days before the Viceroy went there and that he understood Balmokand had the bombs then; whereas by the story told elsewhere the bombs were handed by Basant Kumar to Dina Nath and by him to Balmokand some time between 9th and 24th October 1913, *i.e.*, later, for the Viceroy went to Kapurthala on October 16th. The trouble has arisen over Mr. Tollinton's way of recording the statement at p. 11. He mixes up the conversation as to the Viceroy (September, October 1913) and that regarding the Christmas dance (December 1913) and in a general way says the bombs were with Balmokand then. In the Sessions Court the matter is made quite clear—see p. 50 top and line 39, and p. 22 bottom.

Sixthly, it is pointed out, correctly enough, that there is no corroboration of Dina Nath's statement, p. 22 bottom, that Balmokand said he had consulted Balraj and secured his agreement to the Lahore dance project.

Seventhly, Mr. Beechey complains that his client is brought into the matter of the 3rd and 4th leaflets merely by Dina Nath's unsupported assertion that he gave them to Balraj for no rhyme or reason and that the latter kept them for some time. In reality Dina Nath's story of Balraj's connection with these leaflets is in great detail, see pages 22, 23 and 24, and can hardly be all invention. It is true that to Committing Magistrate, p. 48, middle of his Printed Record, Dina Nath, though not in so many words, gives the impression that he handed over the November leaflets to Balraj on day of receipt, 24th November, but he speaks more explicitly to Sessions Judge, and I do not think it fair to take it that Dina Nath really

meant transfer on 24th November to Balraj. The point is, of course, that Balraj was away from Lahore at Mussoorie until 28th November, and the suggestion is that Dina Nath, learning that Balraj was not in Lahore on 24th November 1913, has deliberately altered his story ; but I cannot find any sufficient ground for this idea, and against it is the important consideration that the latter story came out not in examination-in-chief but in cross-examination, p. 51, lines 14, 30, Sessions Record. Had the (supposed) alteration been the deliberate result of a desire to slip out of a difficulty, I think it would have been made in examination-in-chief and not have been left to the chances of cross-examination ; and see Dina Nath, p. 51, bottom, where he says he did not even then know Balraj was out of town.

Seventhly, attention is drawn to Ex. P.-99 (not printed). This is a slip of paper on which Dina Nath says he tried the typewriter p. 28, line 40, and we find at the top of it

“ LAHORE 211 ”

with the last 1 struck out. It is urged that this was the beginning of the date on which it was being tried ; *i.e.*, 21st November, whereas witness says he borrowed the machine on the 27th, and that the slip therefore gives the lie to him. It is also contended that the document is probably a fabrication for the purposes of the case, but of course, these two criticisms are mutually destructive. I reject both. It is noteworthy that Dina Nath was not cross-examined as to the details of Ex 99, nor asked what “ 211 ” meant.

Eighthly, a futile attack is made upon Dina Nath as to the bringing of the machine from Balraj's, based on the various English records. To Mr Stead, P. W. 36, p. 122, line 40. Dina Nath said Ram Saran Das went with him to Balraj's, but line 46 Ram Saran Das denied this. In Sessions Court, Dina Nath does not mention Ram Saran Das. Then to Mr. Tollinton, p. 8, he said Balraj brought it : to Committing Magistrate he said he went to Balraj's with a coolie and the coolie came back with him carrying it : in Sessions Court he left out the coolie as such and said a man whose name he did not know carried it. This is a very good instance of the sort of minute

analysis to which the approver's story has been subjected, and the whole fabric of the criticism breaks down when the vernacular version in the Sessions Court is seen, for there the coolie is mentioned and naturally the name of the coolie was not known to the witness. The attempt to keep Ram Saran Das's name out arouses no suspicion in my mind.

Ninthly, it is said that, even if Balraj's connection with these leaflets is proved, as I hold it is, this is no proof of his being a member of a conspiracy *to commit murder* ; but as to this I need only point to the contents of the leaflets.

Tenthly, it is contended that Dina Nath never mentioned Balraj until 20th February, *i.e.*, the day after he saw him at Khushi Ram's house, and this makes the mention of him suspicious. To me it seems natural enough that Dina Nath should, in his original statement to police, not tell absolutely all he knew, for he was then only fishing for a pardon and a complete detailed story was not called for; and I can find no reason to suppose that he after that kept improving his story dishonestly or at the instigation of the police.

Eleventhly, in my opinion, Ex. P. 119 is an extremely suspicious document, but, as my learned colleague will explain at length, doubt as to its meaning is permissible. This point I concede to Mr. Beechey.

Twelfthly, Ex. P. 120 is objected to as showing nothing against Balraj, and I rather agree with Mr. Beechey here.

Thirteenthly, Ex. P. 131 (letter to Balmokand) was put forward as written by Balraj, but see P. W. 91, P. W. 92, P. W. 93 and D. W. 5, p. 360, it is not proved. I agree here and leave this letter out of account.

Fourteenthly, one of the strong points in favour of Dina Nath's good faith being the success with which he avoids attributing to Balraj's presence in Lahore when he was really absent. Mr. Beechey tries to meet the argument by pointing out that Balraj arrested on

20th February was at once taken before Mr. Stead, and it is urged that he must then have said he was absent from Lahore from 9th October 1912 to 15th September 1913, and that this was passed on to Dina Nath, so that on 24th February he was able to avoid all pitfalls. This is, of course, *possible*; but I must decline to believe, without better reason, that the police were engaged in tactics of this sort. My general impression, after examination of the whole case and after listening to arguments for 18 days, is that the police have acted throughout with great impartiality and moderation, and I prefer to hold that Dina Nath avoids pitfalls because he is following a straight and true path.

The above is an exhaustive examination of Mr. Beechey's arguments. The result is as stated already: I would hold Balraj guilty of being a member of the conspiracy but of joining it after 17th May 1913, and under section 115, I. P. C., I would sentence him to the maximum there provided.

We now come to the case of

BALMOKAND.

The learned Sessions Judge rightly remarked that this case was inextricably mixed up with that of Balraj. Against him he sums up in a passage which ends thus:

"I have no manner of hesitation in finding that the story told by Dina Nath is substantially true, and that it is corroborated in material details, connecting Balmokand with the offence with which he is charged. I find that he was one of the leading members of the conspiracy, that he took an active part in the distribution of the first "Liberty" leaflets, was throughout in the inner council of the conspiracy, and took over from Dina Nath two bombs which he had received from Basant Kumar Biswas. I therefore find him guilty agreeing with the opinion of all the assessors."

The points taken as proved against him are his participation in the Agarwal Ashram meeting of October 1912 (based on Dina Nath's evidence), at which he was appointed a leader: that that meeting was held for the purpose of organising a conspiracy to

commit murder and distribute seditious literature (Dina Nath) ; that it was through his agency* that Basant Kumar was employed at the " Popular Dispensary " in Lahore (Dina Nath, Girdhari Lal, P.W. 40) ; that Basant Kumar's employment was

not merely an act of charity, for he was to be used and was used in murderous projects ; that he co operated in the May leaflet ; that in October 1913 Dina Nath received two bombs from Basant Kumar and handed them on to Balmokand, who, when Abad Bihari came to fetch one away a few days later, said he had deposited them with a friend (Dina Nath's story) ; that he was consulted about the 3rd and 4th leaflets (Dina Nath) ; and that on several occasions, *e.g.*, the Mussoorie visit, the conspirators came into contact (Dina Nath, Sultan Chand, etc.). It is clear that much depends on the view we take of Dina Nath's good faith. I have dilated on that already, but I may note here the telling remarks of the learned Sessions Judge at p. 26 of his judgment, lines 5 *et seq.*, and the remarkable fact that, as in the case of Balraj, Dina Nath never says he saw Balmokand at times when the latter was away. I agree with the learned Sessions Judge that the above points are proved and that they are sufficient warrant for the capital sentence that has been passed. The position taken up has not been successfully assailed by Mr. Gokal Chand Narang, counsel for Balmokand, as will appear from the following remarks on the arguments, covering a day and a half, put forward by him.

First, it is pointed out, rightly enough, that search of his houses at Jodhpur and Karyala, his home in the Jhelum District, failed to reveal in his possession any seditious literature. *Pro tanto* this is in his favour.

Secondly, admittedly he had no direct connection with the Lahore bomb outrage or the July leaflets.

Thirdly, it is said that Dina Nath admits that before October 1912 he did not know Balmokand's name, though the latter was to be appointed a leader at once, and though Dina Nath had at that time had 6 or 7 admitted meetings and talks with Rash Bihari from

1910. I do not think this is material, though it is certainly a little strange.

Fourthly, no corroboration of Agarwal Ashram, this is true, but I believe Dina Nath.

Fifthly, Amar Nath and Thakur Das (P. W. 38 and P. W. 39) do not say Girdhari Lal put forward Basant Kumar for employment as a *protege* of Balmokand, only Girdhari Lal (P. W. 40), discredited by resiling from his statement to the Committing Magistrate, mentions Balmokand in this connection. But the learned Counsel has overlooked one circumstance which tells very strongly against his client here, namely, that Girdhari Lal, though he repudiates much of his earlier deposition, still says it was Balmokand who brought Basant Kumar to him. This, looked at in the proper way, is almost conclusive that the assertion is true: if the inclusion of Balmokand was a lie told at the instigation of the police, why was it also not withdrawn in Sessions Court? There is no suggestion of any enmity between Girdhari Lal and Balmokand.

Sixthly, it is again urged that Balmokand has proved that at the time of the Agarwal Ashram meeting he was away from Lahore; that on 9th October 1912 he was present in a Magistrate's Court at Dina, District Jhelum, in a case he was concerned in; that he went thence to Karyala, his home, and stayed there, and that on 24th October he was again present in the same Court, at Karyala. The learned Sessions Judge rejects the *alibi*, and after a careful consideration of the evidence I do the same. I am unable to see how appellant has proved more than this that on 9th October he was at Dina and on 24th at Karyala. I have seen Ex. D-12, D-13, D-14, D-15 and this is all they shew. I have looked at the evidence of P. W. 65 Mulraj, p. 158, line 38, P. W. 67 Rambhaji, p. 160, line 19, P. W. 68 Amir Chand, p. 161, lines 10-12. These witnesses, though the statement of the first is ambiguous, do support the *alibi*, which it is also sought to reinforce by Ex. D-48, second and third items. The Sessions Judge's criticisms at p. 33 of his judgment are denounced as "inaccurate" and "flimsy"; but I agree with him

and I think that a bald statement by a witness that so-and-so stayed 15 days in such a place is of little value, made in cross-examination nearly two years after the event and without any indication (a) why the witness should remember so trifling a matter, (b) that the witness had any special interest in the matter or reasons for noting the daily presence of the person concerned.

Seventhly, the whole question of the May leaflets and Fazl Karim (P. W. 87) is attacked and it is said that Balmokand's share in it rests on the unsupported evidence of Dina Nath. This is true in some respects, but the partial corroboration in reference to the type-writer, see depositions of the Jodhpur Princes P. W. 92 and P. R. 93 must not be lost sight of. Further, as already shewn, there is very strong reason for trusting Dina Nath; and it is a useful point in his favour that he admits he did most of the work himself and assigns only a small part to Balmokand.

Eighthly, it is gravely contended that, inasmuch as according to Dina Nath, the two heads of the local gang were to be both consulted as to any proposed action and Balmokand was not consulted about the Lahore murder, therefore it should be taken that he was not a member of the conspiracy to do that murder. This is a mere quibble. Balmokand was away, and he cannot be allowed to escape responsibility merely because an act, fully in keeping with the aims of the conspiracy, was done in his absence.

Ninthly, a pedantic argument of a legal kind, namely, that as in October 1912, the present law (section 120-B) had not been passed, a conspiracy then formed to do murder was no offence, and thus the prosecution must prove an actual agreement to commit murder entered into after 27th March 1913 (date of new law). The fallacy here is in saying that a conspiracy formed in October 1912 was no offence: it was, under the law of abetment. The new section was enacted merely to make the law clearer and more readily available in all possible circumstances.

Tenthly, the whole of Dina Nath's story about his meeting with Balmokand in August—September 1913 and the visit to Mussoorie

seems to me, notwithstanding Mr. Gokal Chand's general criticism of it, to bear the stamp of truth. Raghbir Singh, P. W. 164, confirms Abad Bihari's being there, and the fact that he cannot recognise among the accused the friend who was with him when he saw him, seems to me by no means to contradict Dina Nath, though no doubt it does not corroborate him. In this connection counsel draws attention to the patent contradiction between Sultan Chand, p. 293, lines 50 to foot, and p. 294, line 46, and Raghbir Singh as to the stranger (Balmokand) staying the night in the same room, and one can only conjecture that Sultan Chand is making a mistake or that Raghbir Singh does not like to admit intimacy with a criminal such as appellant. The matter is in any case not enormously important.

Eleventhly, the Sessions Judge says, without support on the record, that Balmokand was a friend of Amir Chand. I agree with Mr. Gokal Chand here.

Twelfthly, Mr. Gokal Chand's remarks regarding dates, etc., in connection with Abad Bihari's visit to get a bomb and the transfer of the two bombs from hand to hand have been already sufficiently dealt with in advance under "Ninthly" in the discussion of the case of Abad Bihari. We have looked at the statement of Dina Nath in the police diaries and it does not help the appellant; and I would like to note here that the story that Abad Bihari came for a bomb and *went away without it* could hardly have been a mere invention. I can see no possible point in such an invention.

Thirteenthly, counsel attempts to overthrow the Sessions Judge's reasoning in connection with Balmokand's second *alibi*, p. 34 of judgment. His client says he was away from Lahore from 20th October to 27th November 1913, that is, till 18th November at Karyala, and Lyallpur 20th to 27th November. We have listened patiently to a very lengthy argument on this point, and have carefully read the depositions of Balmokand's witnesses Nos. 6 to 9. These witnesses counsel describes as independent, but they are far from that, for the first is Balmokand's collateral relative and the

others are all related to *him*. I heartily agree with the Sessions Judge that it cannot be said to be proved that Balmokand was in Karyala from 20th October to 18th November.

There is nothing more worth noting to be said for Balmokand and I would simply reject his appeal. No mercy should be shown to him.

The next appeal for consideration is that of

HANWANT SAHAI,

whose case differs from those already discussed in this, that he is not mentioned by Dina Nath and was apparently not personally known to him. The learned Sessions Judge deals with him at pp. 61-66 of his judgment. He is a near relation of Hardayal, admittedly a friend of Amir Chand and Abad Bihari, being a Delhi man and a Kaisth by caste. He is no student or scholar but a trader by occupation. He first came into the case according to the Sessions Judge as having in April 1913 given to Balmokand the name of Fazl Karim, P. W. 87 as a suitable person to whom to send leaflets for posting up and distribution in the Islamia College, Lahore, where he was a student. Very briefly stated, Fazl Karim's story is that, some days before he got the leaflets, he met Hanwant Sahai for the first time in the house of Panna Lal Mathur, P. W. 138, a Professor in that College ; that he had two talks with him in the course of which the latter spoke of politics, suggested his help in his schemes, read to him passages from "The Prince," told him he, Fazl Karim, was looked upon by the C.I.D. as a dangerous man, and so forth ; that then a packet
 (Corroborated by of 10 leaflets came which however he destroyed ; that he had discussed the matter of Hanwant Sahai's solicitation with an intimate friend, Sheikh Abdul Kadir, P. W. 89, fully corroborates on this point. Appellant called in his defence as to all this, Maulvi Hakim Ali, *quondam* Principal of the College, D. W. 41, p. 377, who says in his presence Fazl Karim admitted that he actually posted up leaflets in the College ; and the learned Sessions Judge thinks Fazl Karim is lying here :

this does not, however, seem to me important. The Sessions Judge relying on Fazl Karim's story, as corroborated regarding Hanwant Sahai and the receipt of leaflets, and refuting the arguments placed before him, believes that Hanwant Sahai really did try to seduce Fazl Karim and did arrange, by (probably) giving the latter's name to Balmokand, for the sending of the leaflets by Dina Nath. I may say at once that I accept this view. The way the name of appellant came out when the police later on questioned Fazl Karim is most natural, and is confirmed most remarkably by the evidence of Panna Lal aforesaid, which shews that Hanwant Sahai really was staying in his house at that time and had talks with Fazl Karim, though not unnaturally Panna Lal shrinks from admitting that he heard sedition talked. The Sessions Judge also points to another less important corroborative incident, namely, the finding in Hanwant Sahai's house at Solon, where he was arrested, of a copy of "The Prince"—Ex. P.-48 A. The summing up of the Sessions Judge on p. 64 seems to me conclusive, except as to one point that will appear later.

The other points against Hanwant Sahai are the proof to be found in the documents found in the house of Radna Mohan, P. W. 21, distant relation of his, that Hanwant Sahai has been the channel by which Har Dayal, who has discreetly kept out of the way in France, Algiers and America, maintained connection with the criminal organisation of which he started the first beginnings; and the intimate friendship with Amir Chaud and Abad Bihari, shewn by the discovery, in the box of the last named, of private papers of Hanwant's, and by the clearly proved fact that they co-operated in the proposed arrangements for the distribution of the infamous *Ghadr*, and by such documents as P. 78 (3) shewing pecuniary dealings with Amir Chaud. Stated so the case does not look very complete, but the detailed examination before us and by us of the oral evidence and of the documents aforesaid, leaves no doubt in my mind that it is fully proved that Hanwant Sahai was, as early as April 1913, if not earlier, probably a member of this conspiracy to commit murder and to disseminate seditious literature. That the

connection between Hanwant Sahai, Abad Bihari and Hardayal was not innocent is fairly clear from the anonymous nature of some letters and the pseudonymous nature of others (*e.g.*, Fateh Chand for Hardayal) and the choice of hidden channels of communication (*e.g.*, Mannu Lal).

It is impossible, and is also unnecessary, for me to discuss minutely and categorically each and every item of the evidence, the important points in which will sufficiently emerge in the following remarks on Mr. Beechey's arguments.

The first point taken is that all the assessors have absolved the man. This is true ; but the case has to be decided on the record itself.

Next, it is asked why Dina Nath should fail to bring him into the story. I think the answer is not that Dina Nath necessarily knew nothing of him, but that he never came into personal contact with Dina Nath. Hanwant Sahai is essentially one of the Delhi section of the conspiracy and Dina Nath of the Lahore section, and the two seem not to have met. Dina Nath thus has nothing to say against him of his own knowledge.

Thirdly, Mr. Beechey says Hanwant Sahai is not shewn to have known that the aims of the conspiracy included murder ; but it is a reasonable inference that his client, giving instructions to send the May leaflets to Fazl Karim, must have read the leaflet (P. 85-A), in which we find such things as :

“ The special manifestation of the Divine Force at Delhi in December last,” etc., alluding to the bomb outrage of 23rd December 1912 ;

“ God Himself worked in Khudi Ram Bose, Profulla Chaki, Kanai Lal Dut, Madan Lal Dhingra ” ;

“ The thrower of bomb on the representative of the tyrannical Government at Delhi was none else but the spirit of the Dispenser of all things himself.”

Further comment as to Hanwant Sahai's knowledge and aims seems uncalled for ; but it must be admitted that it is only a matter

of *inference* that Hanwant Sahai actually named Fazl Karim, to Balmokand

Fourthly, Mr Beechey says the documents found and relied upon are all harmless. It cannot be denied that they shew close touch between Hardayal and Hanwant Sahai, and it is futile for Kishen Dayal, P. W. 167, brother of Hardayal, to try to minimise that connection. It is natural he should do his best to screen both appellant and Hardayal. It is also clear that Hanwant Sahai contemplated at one time joining Hardayal in San Francisco and perhaps earlier in Algiers, and I do not believe for a moment that he was going simply on business. The tone of the correspondence written, of course, in veiled language though it is, makes this clear enough to me. The documents are the P—23 series, found in Abad Bihari's box on the balcony of Amir Chaud's house ; the P—32 series found with Radha Mohan ; and the P—80 and P—82 series found in Hanwant Sahai's house. The genuineness of all these " finds " is undoubted. Taking the last named lot first. I note that, while most of them are innocent, one " The Uprising of the Many " 80-A, is distinctly of a seditious tendency. As regards the P —23 series Mr. Beechey suggests some confusion in making the two search lists, in which they and the P.—32 lot, respectively, occur ; but Mr. Petrie is quite clear about the identity of the P.—23 lot, p. 70, line 7, and see also Inspector Brij Lal, P. W. 8, especially at p. 77, and Birmannand, P. W. 9, at pp. 85 and 86, and Gulab Rai, P. W. 10, at p. 89. It is also clear that the P.—32 packet was kept separate, see Hadow, p 7, p. 71 ; and P. W. 18 to 21, the last being Radha Mohan himself. As to the P.—23 lot the significance of them is that they were all found in one envelope, and several of them, *e g.*, 23-c, 23-e are letters addressed to him. In the absence of explanation it is a fair inference that the whole contents of the envelope were his. Then if they are read, the reader can hardly fail to see that Hanwant Sahai was hand-in-glove with members of a secret society, see P.—23-L, and was in sympathy with would-be assassins and rebels, see 23-M. The next series, P.—32, show connection with Hardayal, and the character and aims of the latter are clear from the *Ghadr* paper, P.—24, O-3 and P —24, O-4 and

P.—177, which is evidently the paper referred to in P.—23, A-1, addressed by Hardayal to Hanwant Sahai. Mr. Beechey argues that there is no proof that any *Ghadr* ever reached his client ; but this is nothing : the police have only been able to get copies intercepted in transit.

Fifthly, Mr. Beechey then criticises the manner in which Fazl Karim first could not remember any one having prepared him for the advent of the leaflets and then, after pressure, said a man called " Sahai " had done so. The suggestion is two-fold either that the police put the name into the mouth of Fazl Karim, or that Fazl Karim had already heard that Hanwant Sahai was a suspect. But such suggestions are futile in view of the fact that Hanwant Sahai really had been at Panna Lal's and had had talks with Fazl Karim, which Mr. Beechey admits. I do not think either Fazl Karim or the police would have dared at that early stage to bring in Hanwant Sahai falsely. Hanwant Sahai was not arrested till 4th March 1914, while Fazl Karim named him on 3rd March. No doubt Exs. P. 23-C., P. 23-L, P. 23-P., P. 31-B.—1, etc., and the P.—32 series mention Hanwant Sahai and had been found ; but they were among a mass of papers that must have taken weeks to examine.

Sixthly, Mr. Beechey says the search which ended in the finding of " The Prince " was perfunctory. I have considered the evidence (P. W. 25 to 27), and I find the search was quite satisfactory and regular.

Seventhly, Mr. Beechey is mistaken when he says that Sultan Chand's deposition is the only evidence of the intimacy between his client and Amir Chand and Abad Bihari, page 293, and that this is insufficient. The finding of his papers in Abad Bihari's box is a strong point against Hanwant Sahai ; and see also P. 31-B.-1. The Sessions Judge also says the intimacy is admitted.

I would therefore find Hanwant Sahai to be guilty as charged and dismiss his appeal, but if my learned colleague has doubts as to the proof of his complicity before 17th May 1913, I am content to give him the benefit of the doubt and to sentence him under section

115, I. P. C., to the maximum sentence there provided, as in the case of Balraj.

BASANT KUMAR BISWAS.

The next is one of the most important of all the appeals, inasmuch as connected with it we have to consider the application for enhancement of sentence. I may say at once that in my opinion this young man is undoubtedly guilty as charged and that no sufficient ground exists for refraining from passing on him a death sentence.

A Bengali boy from the Nadia District, he was taken on by Rash Bihari at Dehra Dun as his domestic servant, given an *alias* (Hari Das), trained to be a useful tool of the conspiracy, taken by his master to Lahore in October 1912, put into employment as a compounder in the "Popular Dispensary" there by Girdhari Lal at the instance of (directly) Balmokand and (indirectly) Rash Bihari, was mysteriously absent from Lahore at the time of the Delhi outrage (December 1912), had a share in distributing the May leaflets, co-operated with Abad Bihari in the Lahore murder, being the actual depositor of the bomb in the Lawrence Gardens, and later, in October 1913, had 2 more bombs which he handed to Dina Nath. This is his record as told by the prosecution, and this has been found proved by all the assessors and the Sessions Judge. A good deal of the story is admitted, see written statement of the appellant, p. 302, Sessions Record ; that is to say, he admits being employed at Dehra Dun by Rash Bihari as a domestic and the concealment of his identity, but he denies any evil motive in the employment, and further explains concealment of name by saying he did not want to disclose his identity as he was ashamed of his menial occupation, and Rash Bihari was ashamed of openly having his meals cooked by a man of lower caste like appellant. He also admits going thence to Lahore, but says he left Rash Bihari because the latter turned him out on his refusing to brush his boots. In Lahore he admits employment in the Dispensary, but says it was got for him, not by any of the conspirators but as a mere act of charity by Girdhari Lal, P. W. 40, then Superintendent of the Hindu Orphanage. He admits he knew Dina

Nath, but denies all knowledge of the conspiracy and all connection with the leaflets and the murder in the Gardens and the two later bombs.

The learned Sessions Judge deals with the case at pp. 43—50 of his judgment. He begins by pointing out that the case is much mixed up with the cases against Balraj and Balmokand, lest it should be supposed that the absolution of Balraj from connection with the Lahore bomb and with the employment of Basant Kumar in some way helps this appellant, I state here that the present case is in no way weakened by this circumstance.

A good deal of the case of Basant Kumar has been already discussed, *e.g.*, see "fourthly," "fifthly" and "sixthly" in the discussion of the credibility of Dina Nath, and the discussion of the two bombs incident under the head of Abad Bihari. These matters I will not touch again; but a few words are necessary as to the Dehra Dun incidents, and the coming to Lahore, and the Lahore bomb outrage, the latter being of capital importance. In the Dehra Dun

¹⁵ * (The oral evidence is P. W. 172, 174, 182, 183, 185, 187, 188.) episode* the only really important matter is the change of name to Hari Das. Though Mr. Sen, appellant's counsel, tries to argue that his client is not to blame if Rash Bihari, unknown to him, chose to tell his caste-fellows that appellant's name was Hari Das (a high caste name), the argument fails hopelessly, because, as we have seen, appellant himself freely admits joining in the deception. Again, Mr. Sen's argument that there could be nothing sinister in the *alias*, because in Lahore his client reverted to his own name, does not appeal to me. It seems to me to point to this that Rash Bihari, intending to make evil use of Basant Kumar in Lahore, wanted to conceal all connection between him and the servant of Dehra Dun days. That arch-conspirator may well have reflected that in some rash enterprise in Lahore Basant Kumar might be caught and fall into the hands of the police, in which case it would be dangerous if he still bore the name he was known by at Dehra. In my opinion on the whole the probabilities are in favour of a sinister explanation of the *alias*; and this conclusion is much confirmed by the fact—see Stead,

p. 120, lines 30-34—that to him Basant Kumar denied ever having been to Dehla Dun or knowing Rash Bihari there.

Dina Nath, p. 15 bottom, is quite explicit that Rash Bihari brought Basant Kumar to Lahore in October 1912. The latter reached Lahore in the first half of that month and was employed on the 15th, at which time Rash Bihari was certainly in Lahore. This alone seems to me considerable confirmation of Dina Nath's version which, as already shown, deserves much credit, even when not corroborated; and there are also the shifty but sufficient deposition of Shib Das, P. W. 98, and his deposition to the Committing Magistrate at p. 139 of that record, besides the additional circumstance that later, when Rash Bihari again comes on the scene, Basant Kumar goes to see him: why should he do this, if he really parted from him in mutual displeasure? A great deal of what I cannot help thinking is useless argument has been expended on the question of the date of Basant Kumar's entertainment by the Dispensary. I cannot see any significance in differences of statement on this day or that, that Basant Kumar *would* get employment or *had* got employment. He was no doubt taken on on 15th October 1912, but it has been lost sight of by counsel that he had no salary then but was taken on on mere subsistence, *i.e.*, on probation. In these circumstances it was by no means improper to talk of him being *likely to get employed*. It is important to notice that the police did not know *date* of employment until 26th February 1914 *after* Dina Nath had spoken to Mr Tollinton. It was on that day they secured Ex. P. 111. Ex. P. 112 does not show *date* but only *month*.

The whole story of the bicycle, the arrangement for the throwing of the Lahore bomb, the meeting of Abad Bihari and Basant Kumar at the Gardens and the deposit of the deadly thing, seems to me to bear the unmistakable stamp of truth. Of course, the last two of these incidents depend on Dina Nath's version of his subsequent conversations with Abad Bihari and Basant Kumar himself; but I believe that version, and under section 10, I. E. Act, this part of Dina Nath's evidence is clearly relevant. I will take up now in

detail all Mr. Sen's criticisms and will shew how inadequate they are. To shorten the matter I will allow that his client's connection with the first leaflet is so slight that it does not tell much against him.

First, Mr. Sen says neither Amar Nath (P. W. 38) nor Thakur Das (P. W. 39) saw any card-board box (containing part of bomb) in the hand of Basant Kumar when he left on evening of 16th May 1913; also that these witnesses did not remember the bicycle incident until pressed and virtually threatened. In my opinion the Sessions Judge is right when he elects to believe these witnesses. It is natural enough they should not remember whether, on that particular evening out of the hundreds of evenings on which Basant Kumar left the Dispensary for an airing, he had a small parcel in his hand; and as to the bicycle it seems to me also natural that its presence should have been genuinely brought back to memory by Dina Nath's reminding them of it. If the police had so frightened these two men that they were ready to say anything, would not the police have told them also to mention the box? And would they, having fallen in with the views of the police, have been allowed to raise up arguments against the prosecution by telling the story of how they came to remember the bicycle? Nor do I think anything of the fact that Dina Nath says he took away the machine on Monday, 2 days after the outrage, while these witnesses say "next day." They *heard* of the outrage on Sunday and say loosely "next day." Even if they really think the bicycle was taken back on Sunday, I can see no importance in this slight lapse of memory. Everything in short points to the entire reliability of these two witnesses.

Next, Mr. Sen tells us that his client was absent from Lahore four times (i) 21st December 1912 to 15th January 1913; (ii) 24th August 1913 to 8th October 1913; (iii) 24th December 1913 to 15th January 1914; (iv) 5th February 1914 until his arrest at Nadia. How this helps his client, I cannot say; it certainly helps Dina Nath, who has never fallen into the mistake of attributing to him

any act in Lahore during those periods, except the matter judiciously dealt with by Sessions Judge at p. 47, 2nd para. of his judgment.

Thirdly, the whole question of the Lahore murder was evidently very hotly contested in the Lower Court, see pp. 47 and 48 of the judgment, and we have read and carefully considered all the 8 points raised there. Before us Mr. Sen specifically notices the 3rd point, which does not seem to me important. I think it is quite natural that in his general first statement to Mr. Tollinton Dina Nath should have omitted matters which he knew all the time. Then he discusses the 5th point, the difficulty about the times of the putting down of the bomb and of the explosion and of the return of Abad Bihari to his College. The last-named difficulty I think nothing of ; there is no evidence that any responsible person keeps the record of arrivals of inmates and one knows how casually these things are usually done. No doubt Amar Nath, p. 127, line 11, says Basant Kumar came back that evening at 8-30, but he adds "or after " There is thus here no *alibi* for him worth mentioning. Thakur Das, p. 131, line 31, says " about 8-30," which is equally useless ; neither had any special reason for noting the time. The explosion actually took place at 8-55 p.m., see Mr. Bevan Petman, P. W. 131, pp. 221-222, but we do not know for certain how long before the explosion the bomb was laid down, for the evidence of such witnesses as D. W. 1 for Basant Kumar, p. 359, really proves nothing. No other points are argued, and I think the Sessions Judge is generally correct in the whole of his discussion of the subject.

Fourthly, it is asked why Basant Kumar, not shown to be previously known to any conspirator but Dina Nath, should have suddenly developed into a murderer, and why the astute Dina Nath and Abad Bihari should have entrusted so dangerous and delicate a task to him. All this ignores human nature and especially criminal human nature. Experience shows that it is the invariable rule in criminal conspiracies for the master minds to keep in the background and to employ pupils and tools in all acts of violence. Basant Kumar had had a long training and was quite ready for anything, though

he was kept purposely outside of the inner circle, so that, if caught, he would not be able to give much information to his captors.

Fifthly, it is suggested that Dina Nath did the whole thing himself, or with the help of his cousin Ram Saran Das. As to this, no doubt this is physically *possible*, but it is so improbable that I must reject the suggestion.

Sixthly, Rash Bihari was a police spy. I have already said I am leaving my learned colleague to discuss this. I only draw attention to the pregnant remark at p. 19 of the Lower Court's judgment, 19 lines from the bottom.

I find, then, as already stated, that Basant Kumar is guilty as charged, and there can be no reasonable ground for doubting that as a member of this murderous conspiracy he actually caused the death of Ram Padarath. I can find no extenuating circumstance. He is not a boy, for at 23 an Indian has long reached maturity. We have seen him in Court, he was specially sent for and I am unable to recognise in him any indications of deficient development, either mental or physical. He looked to me a man of some force of character, with none of the familiar marks of weakness in his face. No doubt he comes of a humble class, as Sessions Judge says, but this is no reason for shewing mercy. He is an educated man, able to do compounder's work and intelligent enough to get employment and to secure* increase of pay after some months. The mere fact that he was never in the inner circle of the society is nothing in his favour; and it is a very damning fact that a few months later he should have been in possession of two more bombs.

* See his written statement, p. 302, line 50.

Finally, I would note that he was not in May 1913 acting under the influence of the supposedly overpowering Rash Bihari, for he had not at that time seen him for ever so long. In short, he is guilty and he should be hanged.

I will now take up the case of

CHARAN DAS

who has been acquitted and against whose acquittal the Crown has appealed. The learned Sessions Judge says the evidence against him is all admitted, but finds even so he is not proved guilty. Perusal of this part of the judgment shews that the most important feature of the case is the man's confession : if it is genuine and voluntary, he is undoubtedly guilty ; if it is not, the case is not so strong. The prosecution, however, insist that even apart from the confession the evidence is sufficient for conviction. I state at once that I see no reason to reject the confession, the circumstances under which it was made satisfying me that it was voluntarily made, though afterwards retracted, there being also sufficient corroboration, and Mr. Sen's arguments *per contra* by no means impressing me as valid.

Perhaps the best way to deal with this case is to follow the learned Sessions Judge. On p. 69 of his judgment he states what is proved if the confession is accepted and the points may be stated thus—

- (a) Shown and admitted that he had known Rash Bihari for two years.
- (b) Clear from the confession and documents that Rash Bihari had trained him in the peculiarly diabolical way described in an earlier part of this judgment.
- (c) Accused stopped with Rash Bihari and used his address for receipt of letters, see Ex. P. 31-A.
- (d) He forwarded letters for Rash Bihari to Lahore and allowed his name to be used in enquiring as to hotel rates from Khanna, P. W. 134.
- (e) A code was found on Charan Das's person, see third entry in Exhibit P. 153, and this was to be used in correspondence with Rash Behari, who handed it to him at his (Charan Das's) home in Gurdaspur.

- (f) A futile attempt having been made to ascertain Mr. Gordon's address in the District Office, Gurdaspur, where accused was Revenue Clerk ; Rash Bihari told accused that he wanted to kill that gentleman, who (in Bengal) had put obstacles in their way.
- (g) At same time Rash Bihari told him he could get bombs and where they were made.
- (h) Told him also that he contemplated getting him (accused) employment in Lahore, where he would be more useful ; *cf.* last line of Ex. P.—154-L. written by accused to him.

Then the Lower Court goes on to express the opinion that, with the help of the confession, it can safely be taken as proved that the respondent knew the work Rash Bihari was engaged in, knew that Rash Bihari only wanted Mr. Gordon's address in order to make plans for killing him, knew that Rash Bihari was going to Lahore on the business of this murderous conspiracy and helped him and forwarded letters to him ; but that, without the help of the confession, no more is proved than that Charan Das was in process of being trained to join a conspiracy, of which he is not proved actually to have become a member. I am inclined to agree with Mr. Ross Alston, that, confession relevant or irrelevant, the charge is established. On all the points (a) to (h) detailed above there is independent evidence, except (g), which depends entirely on the confession, thus—

- (a) See written statement, p. 330, line 45, and P—108-H.

* The printers have made a mistake in connection with P—154. The first page of it and of Ex. P—113-A is all right, but the second pages of each have been transposed, *i.e.*, interchanged.

- (b) See same page, lines 45 to 50 ; also entries Nos. 6, 7, 11, 17, 18, 22 and others in* Ex. 154 (list of things found in Charan Das's house), especially 7, 17, 18 and 22 ; also letters of the 108 series, especially P—108-H.

- (c) Exhibit P—31-A and written statement, p. 330, lines 48 to end of page.

(d) See written statement, p. 331, lines 6 to 14, and connected documents, *e.g.*, Exs. P—101, 101-A, 101-B, 108 Z-A and other letters of the P—108 series.

(e) See the Code. It is impossible to suppose that Charan Das's present story is true that Rash Bihari, before leaving for Lahore, thrust this into Charan Das's hand telling him merely to keep it for him. It is justifiable to infer from the gift of this Code to Charan Das that it was to be used in furtherance of criminal designs.

(f) In his written statement, p. 330 bottom and p. 331 top, Charan Das admits that at the instance of Rash Bihari he enquired about Mr. Gordon's address, but does not admit that the enquiry was made with reference to any murderous design. However, the evidence of Nathu Ram and Muhammad Yusaf (P. W. 95 and P. W. 94) afford a certain corroboration that the enquiry was not innocently made.

(h) As already noted, see last line of p. 154-L.

Even on this evidence, leaving out the confession, my opinion is that Charan Das is sufficiently shewn to have joined the conspiracy before 17th May 1913. Ex. P—108-G. and its reply, P—154-L. both of October 1912 with the pregnant sentence in the letter—"I think you might have finished the work which was the cause of your journey to Lahore"—together with the animated correspondence the two men maintained, satisfy me that they were in each other's secrets. But we are not justified in setting aside the confession. The Sessions Judge's reasons for doing so are singularly unconvincing. They may be stated briefly thus :—

(i) It was made on 3rd March 1914, *i.e.*, 11 days after the arrest. I am unable to see any force in this. One would hardly expect a man in the position in which Charan Das found himself to blurt out a confession at once.

(ii) It was recorded in the Railway Police Office, "not a very happy selection." But it was recorded by a

Magistrate of the 1st class and the police were not present, except momentarily, when Mr. Stead came in to get his despatch box—see *M. O'Neil Shaw*, p. 241, line 43. This objection seems to me to have no value whatever.

(iii) The precautions laid down by the Code of Criminal Procedure antecedent to the recording of a confession were neglected. The law is contained in section 164 (2) of the Code and section 364 (1). The former provision runs thus—

“No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily, and when he records any confession, he shall make a memorandum at the foot of such record to the following effect, etc.”

The confession has been printed as *Ex. P. 204*. It contains the prescribed memorandum and is signed by the Magistrate. There is no note before the confession that the Magistrate satisfied himself that it was going to be voluntarily made and this was an irregularity; but this, in my opinion, has been fully cured by the examination of the Magistrate in the Sessions Court—*P. W. 158*, p. 241—under section 533 of the Code. The Magistrate says :—

“Before recording the statement I satisfied myself that Charan Das was making a voluntary statement. Only the accused and myself were in the room when I recorded his statement. This is a full and true record of what he said. The certificate at the end is in my handwriting. The statement was read out to him, and he signed it. I asked Charan Das whether he was willing to make the statement. He said, yes. That is all the conversation I had with him before beginning to record the statement. Charan Das did not indicate by anything he said or by his manner that he was not acting of his own free will. Nothing happened which suggested to my mind that he was not acting of his own free will.”

I confess that I am unable to see what more was required to put matters on a proper footing, and it is somewhat remarkable that the Sessions Judge *at the time* seems to have been quite satisfied—see the note at top of p. 242. The policy of the Legislature in this

matter is clear. Certain rules are laid down the observance of which enables the Court dealing with a confession to be *prima facie* assured that it was voluntarily made ; but well knowing that in the hurry of work the formal recording of what has been said and done is not always perfect, the Legislature, to prevent miscarriages of justice and to ensure that evidence of value shall not be lost, has enacted section 533 aforesaid. The important thing is not the formal writing down of this or that, but that it should be made clear to a Court using a confession as evidence that the recording Magistrate applied his mind to the question whether it was being voluntarily made and decided that question in the affirmative.

As regards section 364, Cr. P. C., I need only remark upon the rule that questions and answers should be recorded in full ; but the matter is of no great importance in any case and is of none at all here, for the Magistrate seems to say that the only questions put were when the Magistrate could not altogether follow the speaker and wanted him to be more explicit.

In my opinion the confession is not vitiated by its informality, and indeed is not in the least weakened.

- (iv) Then the Sessions Judge says the confession was dictated from a written statement previously prepared by Charan Das while in police custody. The Magistrate rather supports this idea, line 28, p. 241, but both he and the Sessions Judge make too much of it. Comparison of the written statement in question (D.-29) and the confession shew it is a misuse of language to talk of " more or less *verbatim* " and " practically dictating." There is, as we have seen for ourselves, much difference between these two documents. I would like to draw special attention to P. 204, p. 2, first half of page, and p. 3 as to Mr. Gordon, and the cartridges (not in D. 29), and the writer of the leaflets, P. 204, has much not in D. 29. Things present in one are not in the other ; phrasology, in some passages alike, is in important parts

different, and such differences occur as the divergent accounts of the apparition, etc., of the boy "Sant" (meaning Basant Kumar); and, in my opinion what really must have happened is this. Charan Das told the police he was willing to confess. Knowing that the story to be told would cover years and that in the stress of examination important particulars might be omitted, Charan Das, either on his own initiative or upon suggestion by the police, made out a rough sketch of his tale. Brought before the Magistrate, he held this in his hand and refreshed his memory from it.

There are many reasons for looking at the thing in this way, but I need only discuss one or two. The first is, of course, the results of our comparison of the two records, D. 29 and P. 204. The next is that the circumstances, taking the worst possible view of police morality, did not call for such a device. As we have seen a very large part, in fact nine-tenths, of D. 29 (leaving out the treatise on philosophy) is *admittedly* true and it is only here and there in the confession that statements are made the truth of which is now denied. If the accused had been put up by the police to tell a long and intricate story, wholly or mostly false, he would certainly need a memo. like D. 29 to keep him straight; but why should the police be anxious that he should have a memorandum in the actual circumstances? The police are presumably not fools, and they must have foreseen the sort of argument that would be raised on the foundation of the use of D. 29.

The Sessions Judge does not believe Charan Das's statements that he was compelled to confess by threats and promises, and I agree with him heartily here. His Counsel did not venture to cross-examine S. Sukha Singh or Mr. Stead as to threats or promises or ill-treatment, nor did accused say a word on the subject to the Committing Magistrate—see p. 331, lines 30-40, Sessions record. I also do not believe—again agreeing with the Sessions Judge,—that

he was brought up before the Deputy Commissioners of Gurdaspur and Lahore in succession and refused to confess, but even if he did, does this disprove in the smallest degree that by 3rd March 1914 he had become willing to confess? And the remark of Mr. Shaw at p. 241, lines 37-38, that he said Charan Das should speak the truth and it would be better for him, must not be taken as an inducement by a person in authority, for the remark was made after the confession had been recorded.

I think, further, that there is in the confession and in the document D. 29 indication that they were not written or made at dictation of police who wanted Charan Das to put the noose round his own neck. Would the police have made him write that part of D. 29 which is a philosophical or religious tract? Or would they have told him to pretend he was not in favour of violence? As a matter of fact it is futile for him to pretend that he did not approve of Rash Bihari, for see P. 154-M, which (proved by P. W. 172, p. 262, bottom) shows Charan Das wanted to maintain the connection.

Then, apart from the relevancy of the confession, which I consider clear, there is the question of its value. I believe it to be all true, that is, I see no reason to doubt that everything Charan Das in it says against himself is true, though it may not contain the whole truth.

In short, I hold it proved that from some time in 1912 Charan Das was hand-in-glove with Rash Bihari and was prepared to help him and co-operate with him in this conspiracy, well knowing that murder was contemplated.

I have given careful and earnest attention to Mr. Sen's arguments against this appeal, but the facts are too strong for him. He again parades the Rash Bihari police spy theory, which I have already discussed, and strives hard to shew that the P. 108 series of documents and 154-L. are harmless. No doubt we cannot find in them plain statements of intention to do murder, but the whole

tone—see especially 154-L. last few lines of first para.—shows that in the minds of writer and addressee was working something not to be disclosed, something in the achievement of which all possible spiritual and moral re-inforcement was requisite. Finally, he cites a large number (16) of rulings as to retracted confessions. He did not rely on any special *dicta* in them, and Mr. Ross Alston has not discussed them. Most of them are well known and contain familiar maxims with which we have no quarrel, and I do not think any good purpose would be gained by wading through them here. I am well aware of the warnings against retracted confessions; but each case must be treated on its own merits, and I have no hesitation in accepting this confession, or in holding that, on the strength of it and of the abundant corroborative evidence put forward, Charan Das is guilty as charged and should be sentenced to transportation for life. I do not think he is so bad as the four condemned to death and, therefore, the lesser sentence will suffice.

Finally, at the end of the proceedings, Mr. Broadway put before us a copy of a paper called "India," published in London and dated Friday, October 23rd, 1914, in which (p. 165) is to be found an article headed "Delhi Sedition Trial." It purports to be a reproduction of an article from "The New Statesman," a paper unknown to me, of October 17th, upon the very case which has been occupying our attention during the past month, and it consists of a denunciation of the police and the Indian Courts, a discussion of the merits of the case with a strong bias in favour of the accused, and an attempt to "whitewash" some of them. Government, through Mr. Broadway, asks us for an expression of opinion on this phenomenon, and for my part I hasten to say that the publication of this article is a very bad case of contempt of Court. It is contrary to all the canons of decent journalism and one only regrets that the state of the law and the fact that the "India" is not published in this country make it impossible for us to take any action.

ANNOUNCED : } (Sd.) D. C. JOHNSTONE,
Dated 10th February 1915. } Judge.

The case as a whole, and in particular as regards each individual concerned, has been dealt with exhaustively by my learned brother with whom I have considered and discussed the evidence on the record and the arguments addressed to us, and whose judgment I have had the benefit of reading, and I find myself so entirely in agreement with all his conclusions that I might content myself by merely expressing my general concurrence especially as I feel I cannot add anything of very material weight or value. But in view of the important issues involved and of the very able arguments addressed to us by the learned gentlemen who appeared, respectively, for the various appellants, the respondent Charan Das, and the Crown, I feel it necessary to deal, though as briefly as the circumstances will permit, with some of those arguments and certain more general aspects of the case before us.

The questions of law which we have to decide are stated succinctly in my brother's judgment.

(A) It is, in the first place, urged that the charge as amended (see page 209 of the Sessions Judge's record) was so vague and misleading that it materially prejudiced the accused persons, and it was explained that this vagueness consists in the omission to specify (a) the date on which the accused persons are alleged to have agreed *inter se* to commit murder ; (b) "the other places" in British India where they are said to have so agreed ; and (c) the person or persons whom they are alleged to have agreed to murder.

As regards this objection, I have no hesitation in holding that these omissions in no way prejudiced the accused who were all defended by counsel and were fully cognisant of the nature and particulars of the case which each of them had to meet. In my opinion, sections 225 and 537 of the Criminal Procedure Code would afford a complete answer to this objection, even if it be assumed that the particulars referred to should have been set forth in the charge. But I go further and hold that it was not incumbent upon the prosecution to specify any such particulars in the charge. I shall deal later with the objection that the date on which the alleged

agreement was entered into should have been set forth, and it is only necessary here to state that, generally speaking, it would make it impossible for the prosecution to succeed on a charge of conspiracy if such a charge could not be substantiated without proving the exact date on which each alleged conspirator entered into the conspiracy.

As to the places where the accused persons are said to have agreed, the charge expressly mentions Lahore and Delhi, and the words "or in other places in British India" were added obviously *ex majore cantela*, and could not have misled any of the accused persons. At all events, no one of the learned gentlemen who appeared for them was able to state that his particular client had thereby been prejudiced.

Then, as to the omission to specify the intended victim or victims of the conspiracy, I need say no more than that it must have been obvious to the accused as the trial proceeded that they were alleged to have conspired to murder Europeans, generally—without regard to age or sex, or to the possibility that the lives of others than Europeans might thereby be sacrificed. The charge is that they agreed "to commit murder," and in such cases Reg. v. Most (72 B. D. 244 ; 50 L. J., Mag. Cas. 113) is ample authority for the proposition that it is not necessary for the prosecution to particularize the person or class of persons intended to be murdered. As a matter of fact, the prosecution in the present case could not possibly have given such particulars, as their allegation is that the accused were ready and agreed to kill indiscriminately in the hope that in so doing they might murder Europeans. Persons, for example, who agree to throw a deadly bomb at the Viceroy upon the occasion of a State Ceremonial, or into the Montgomery Hall when a crowded ball is in progress, must know that the chances are very considerable of their killing not only Europeans but Indians as well.

The case upon which reliance is placed by Mr. Raghunath Sahai (I. L. R., XXXIII Calc., 295) relates to an entirely different

state of facts, the accused persons there having been charged with committing riot with the common object of taking possession of "some property" by means of criminal force or of enforcing a right or supposed right in it. Mookerjee and Woodroffe, JJ. (Rampini, J., dissenting) held that if the property had been specified, the whole complexion of the case would have been altered. This was clearly a decision upon the peculiar facts of that case and can have no relevancy to the case before us.

(B) It is next urged that the pardon granted to the approver, Dina Nath, by the Committing Magistrate (Mr. Counolly) was illegally granted and that in consequence the evidence thereafter given by Dina Nath at the inquiry and trial was legally inadmissible. The ground upon which this objection is based is that the Committing Magistrate was at the time inquiring into charges of various offences of which one at least (that under section 124-A., I. P. C.) was not exclusively triable by the Court of Sessions.

The short answer to this objection is that under the provisions of section 337, Criminal Procedure Code, it is permissible to the Magistrate inquiring into *any* offence triable exclusively by the Court of Sessions, to tender a pardon to any person supposed to have been directly or indirectly concerned in, or privy to, such offence. Here the offence in respect of which the accused were tried (sections 120-B and 302, I. P. C.) was admittedly one triable exclusively by the Court of Sessions, and I cannot agree that because at the same time the Magistrate was inquiring into another offence not so triable, he was thereby precluded from tendering the pardon. So far as the present trial is concerned, the tender of pardon made by the Committing Magistrate was, in my opinion, validly and legally granted.

(C) In the third place, it is objected that the real offence charged against the accused was that of sedition, an offence punishable under section 124-A, I. P. C., and that as the sanction prescribed by section 196, Criminal Procedure Code, was not obtained, the whole trial is null and void. This is a somewhat

curious argument and not very easy to follow. The accused were not tried upon any such charge nor did the prosecution at any time allege upon this trial that any of the accused had been guilty of offences punishable under section 124-A of the I. P. C. So far as the present trial is concerned, the accused were charged with having entered into a conspiracy to murder and the evidence adduced by the prosecution was intended to prove, not that the accused or any of them had been guilty of sedition, but that they had agreed to commit murder or to abet the commission of murder. The charge was, therefore, clearly and specifically framed under sections 120-B and 302/109, I. P. C., and section 196 of the Criminal Procedure Code has no possible relevancy.

(D) It is next urged that as a murder was actually committed at Lahore on the 17th May 1913, such of the accused as were alleged to have been concerned in that murder, should have been tried for that offence and not for having conspired to commit murder.

In support of this contention reliance is placed upon certain remarks of Jenkins, C.J., in I. L. R., XXXVIII Calc., at pages 578 and 579, but those remarks had reference to the peculiar facts of that case, and in any event, as observed by the learned Chief Justice and also by Rolfe, B. (in *R. v. Salsby*, 5 Cox, C. C., 495) and Cockburn, C. J. (in *R. v. Boulton*, 12 Cox, C. C., at p. 93), the course adopted by the prosecution, though not altogether satisfactory or expedient is undoubtedly legal. In the circumstances, as there was nothing illegal in the procedure, we obviously cannot, especially at this stage, interfere with the discretion of the prosecution who had elected to proceed against all the accused upon the charge of conspiring to commit murder, instead of charging some of them with the actual murder of Ram Padarath and the others with the offence of entering into a conspiracy to commit murder.

(E) Mr. Beechey, on behalf of the appellants Balraj and Hanwant Sahai, contended that acts or statements said to have

been done or made by alleged co-conspirators are not admissible in evidence against a person accused of an offence under section 120-A of the I. P. C. unless (1) it is first proved that a conspiracy existed and that the accused person was a member of that conspiracy; and (2) such act or statement was done or made in the execution or furtherance of the common object. In support of this contention the learned counsel relied upon numerous English authorities, but even in England it has been held in many important cases that evidence may be given of a general conspiracy before any proof is adduced of the particular part which the accused party has taken (Roscoe's Criminal Evidence, 11th Edition, p. 405, and cases there cited). The law as enacted in section 10 of the Indian Evidence Act, 1872, is much wider and more general than the English law, and under its provisions once the Court has "*reasonable ground to believe* that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons *in reference to their common intention*, after the time when such intention was *first entertained by any one of them*, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it." In *Pulin Bihary Das v. Emp.* (16 Ind. Cases at p. 315), Mookerjee, J., observed :—

"I must advert for a moment to the contention of the learned counsel for the appellants that before a document in the possession of any of the accused persons can be used in evidence against the others, it must be completely established by independent evidence that they were conspirators. This argument is too broadly formulated and is negatived by section 10 of the Indian Evidence Act..... It is clear, therefore, that for the admission of such evidence, what has to be established is that there is reasonable ground to believe in the existence of a conspiracy among such persons.... The reason for this doctrine is plain. The criminality of the conspiracy lies in the concerted action, and once reasonable grounds are made out for belief in the existence of the conspiracy against the accused, the acts of each conspirator in furtherance of its object, are evidence against each of the others, and this whether such acts were done before or after his entry into the combination, in his presence or in his absence."

But it is not only when such acts are done or statements made *in furtherance of the* objects of the conspiracy that they are relevant under section 10 of the Indian Evidence Act against the other accused persons ; they are equally admissible under that section if done or made *in reference to* the common intention, though not in support or in furtherance of it. "The act or declaration of a "co-conspirator may have been done or made to a stranger to, "and in the absence of, the party against whom it is offered ; or "without his knowledge or before he joined the combination or "even after he left it," (Ameer Ali and Woodroffe's Indian Evidence Act, 3rd Edition, p 120 ; Cunningham and Shephard's Indian Evidence Act, 11th Edition, pp 29-30).

In order, therefore, to decide in the present case whether any act done or statement made or thing written by an alleged co-conspirator is admissible in evidence against any of the accused persons, the test we shall have to adopt is to see, in the first place whether there is *reasonable ground to believe* that a conspiracy existed between him and any such person, and in the second place whether such act, statement or writing had *reference to* their common intention.

Mr. Beechey's further contention that the *Illustration* appended to section 10 of the Indian Evidence Act is erroneous in law and not justified by the terms of the section may, or may not, be correct. So far as I can remember, the illustration has not been called in aid by the prosecution to support the admissibility of any evidence tendered by them in the course of the present trial, and it has frequently been held that "Illustrations" appended to sections of an Act of the Legislature are not to be taken as express provisions of law or as binding on the Court (see authorities cited at p. 41 of Ameer Ali and Woodroffe's Indian Evidence Act).

(F) A contention vigorously put forward by every one of the learned gentlemen who represented the accused persons relates to the evidence given by Dina Nath the approver. It was pointed out time after time that he is on his own showing an accomplice in a vile crime, a traitor of the worst and most despicable type, and a

man who would have no scruple in committing perjury in order to save himself and his relations, Jagannath and Ram Saran Das. A large number of authorities were referred to in support of the proposition that the evidence of an accomplice should not be accepted as sufficient basis for a conviction unless independent evidence corroborated it in material particulars directly connecting the accused with the commission of the crime; in other words, that there must be corroboration *aliunde* not only as to the crime but also as to the identity of each of the accused. As a general proposition, enunciating a rule of practice which is now well recognised and acted upon by the Courts of this country, this statement of the law is correct, but it is an equally well established principle that there is no hard and fast rule which absolutely and under every possible circumstance precludes a Court from accepting and acting upon the uncorroborated evidence of an accomplice. On the contrary, section 133 of the Indian Evidence Act expressly provides that "an accomplice shall be a competent witness against an accused person;" and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. If, therefore, the Court, while keeping in view the presumption that an accomplice is unworthy of credit unless he is corroborated in material particulars [section 114, Illustration (b), of the Indian Evidence Act] and after making due allowance for the considerations which render the evidence of an accomplice untrustworthy, nevertheless comes to the conclusion that it is true although uncorroborated and that it establishes the guilt of the accused, it is its duty to convict (I. L. R., VII All., 173; IX All., 528). Nor in any event is it necessary that the evidence of the accomplice should be corroborated in every detail, if, taken in its entirety, it is found to be confirmed by the testimony of independent witnesses or by circumstantial evidence which strongly supports it.

In the case before us the approver, Dina Nath, was arrested about mid-day on the 18th February 1914, and on the 24th February before Mr. Tollinton, District Magistrate, he made a lengthy statement which exhibits an intimate and extensive knowledge of the movements at various times and places of Amir Chand, Abad Bihari,

Balmokand, Balraj and Basant Kumar Biswas. It is absurd to argue that within the short time that elapsed between his arrest and his appearance before Mr. Tollinton, the police had obtained knowledge of these facts, but even if we assume that they had, I cannot believe that it would have been possible for them to "tutor" Dina Nath with such success that he made no slip in any material point when making that long and detailed statement. Nor, again, can I believe that it would have been possible for Dina Nath after the lapse of a period, extending sometimes to over a year, to recollect, with such amazing accuracy, the facts of the presence or absence of those persons at or from various places at different times, details which would be very unimportant *per se* unless he had some very special reason for keeping the facts in mind, or was truthfully relating events as they actually occurred. To take an example to illustrate my meaning. Dina Nath obviously knew that Balmokand was in Lahore in April 1913, but, unless Balmokand's presence in Lahore at that time was associated in his mind with some event of importance (such as the consultation about the preparation of the first *Liberty* leaflets), would it have so impressed itself upon his memory that he could, some ten months afterwards, boldly and confidently assert that he and Abad Bihari met Balmokand at the latter's house in Lahore on that occasion? If it be urged that this was a mere lucky guess on his part, the obvious answer is that it would have been a singularly risky speculation, especially as we now know that Balmokand actually left Lahore shortly afterwards on the 13th May 1913. Here, again, upon the assumption that Dina Nath's story is untrue, we must take it that Dina Nath knew that Balmokand had left Lahore on the 13th May and was away till the 27th May when he admittedly returned to Lahore, and that for some unknown and unexplained reason Dina Nath kept this fact in mind and was thus able to avoid the pitfall of accusing Balmokand of participation in the Lahore bomb outrage which took place on the 17th May 1913. If the story which he tells is untrue, and if his object is to get Balmokand, a perfectly innocent person into trouble, why did he not accuse him of having taken part in that crime? According to his own statement, Balmokand was selected by Rash Bihari to be one of the "Heads" of the conspiracy,

so far as the Punjab was concerned, and in the natural order of things, Balmokand obviously ought at least to have been consulted before that crime was committed. But Dina Nath does not suggest that Balmokand was present at Lahore at the time or in any way concerned in or consulted about that transaction. The only explanations possible to accept for this omission are (1) that Dina Nath is truthfully relating facts as they actually occurred and does not mention Balmokand's name because in point of fact Balmokand had nothing to do with the outrage, or (2) that Dina Nath, though lying, has retained in his memory the fact that Balmokand was absent from Lahore for about 11 days in May 1913. Then, again, Dina Nath does not connect Balraj directly with any of the proceedings of the conspirators that took place between October 1912 and September 1913, and it is admitted on both sides that Balraj was not in Lahore during that period. But Balraj returned to Lahore about September 1913, and in that month he was, according to the approver, consulted by Balmokand as to the advisability of throwing a bomb on the occasion of H. E. the Viceroy's visit to Kapurthala on the 16th October 1913. Now, unless Dina Nath had actual knowledge of, and special reason for recollecting Balraj's return to Lahore in September 1913, after a long absence, is it likely that he would have run the risk of bringing in Balraj's name on the occasion? He knew Balraj had long been absent from Lahore and, apart from the reason given by him, he would have had no special cause to remember many months later whether Balraj returned in September, October or November. It was not till the 20th February 1914 that Balraj was arrested, and it is difficult to believe that within three days the police were able to trace all his movements between October 1912 and September 1913. Mr. Beechey did, indeed, suggest that Balraj himself had given all this information to Mr. Stead on the 20th February, but I cannot find anything in Mr. Stead's evidence to support the suggestion, as all that that witness says is that Balraj told him that he (Balraj) could not have had a hand in the bomb outrage, as he was at Jodhpur at the time. From this the learned Counsel infers that Balraj gave Mr. Stead a full and detailed account of all his doings between October 1912 up to the 20th February 1914.

But even if Mr. Stead did receive this information and forthwith conveyed it to the approver (a suggestion which I cannot entertain), I find it impossible to believe that Dina Nath could have so accurately retained all the details in his memory as to avoid making any mistakes when his long statement was recorded by Mr. Tollint in two days later. In saying this I am not overlooking the argument that Dina Nath is alleged by the defence to have made a fatal mistake with regard to the date in November 1913 on which he handed over the parcel of the third *Liberty* leaflets to Balraj. This argument is fully discussed by the Additional Sessions Judge in his judgment at pp. 39-40 and I agree with him that there is no force in it. Balraj's absence from Lahore from the 21st to the 27th (or possibly 23th) November was definitely established about one month after Dina Nath had made his statement in the Sessions Court, and till then the defence had not suggested any *alibi* as regards this incident. It is true that the police were aware on the 2nd March 1914 that Balraj was not at Lahore between the 21st and 27th November, but had they acquainted Dina Nath with this information, it is hardly likely that he would not have stated in his examination-in-chief the important fact which Balraj's Counsel succeeded in eliciting in cross-examination. In his examination-in-chief, Dina Nath deposed that he took delivery of the parcel on the 24th November and asked Balmokand what he should do with it. He then adds, "he told me to give them over to Balraj"..... "I gave this list with the leaflets to Balraj." In reply to questions put to him in *cross-examination*, he added that he had taken the parcel to Balraj's house on the 24th November, but finding it shut and its owner absent, he brought the parcel back and kept it in his own trunk for three or four days when he handed it over to Balraj. The fact that this further information, which shows that Dina Nath was well aware of the temporary absence of Balraj from Lahore in November was brought out in cross-examination is significant, as virtually negating the possibility of its having been conveyed to Dina Nath by the police in order that he might explain away his statement to the Committing Magistrate which, read literally, might suggest the idea that he made over the parcel to Balraj on the very day that it

arrived. Not, indeed, that there would be any weight in the suggestion that the police gave Dina Nath this information ; they were aware on the 2nd March of Balraj's absence from Lahore on the 24th November, and it was not till the 30th March that Dina Nath made his statement before the Committing Magistrate but he made no use of the information then in the possession of the police. Balraj who would have us believe that he is not even an acquaintance of Dina Nath, obviously would not have supplied this information to the latter, and for the reasons given I am satisfied that Dina Nath did not get it from the police. Unless, therefore, his story is true, how did he acquire this information ?

The learned counsel for the accused persons have suggested that Dina Nath has, from time to time, and as he was supplied by the police with additional items of information which came to light as the investigation proceeded, elaborated and added materially to the statements made by him to Mr. Tollinton on the 24th February 1914 and to Mr. Connolly during the inquiry. I confess I have not been able to discover any such material elaboration. All the essential facts were stated to Mr. Tollinton, and as regards details which came out at subsequent stages, it must be borne in mind that on the 24th February 1914 Dina Nath was himself narrating from memory the general history of the conspiracy with special reference to the Lahore bomb outrage. Before Mr. Connolly he was examined by Counsel for the Crown who would, in the natural course of things, get a more detailed account from him by questioning him on various points, and in the Sessions Court all the more important additional details were brought out, not invariably to the benefit of the accused persons, by their own counsel in cross-examination. But I cannot find in any of the additional particulars anything to support the contention that Dina Nath's statement to Mr. Tollinton did not give in all material respects, a full account of the connection of Abad Bihari, Amir Chand, Balmokand, Balraj, and Basant Kumar Biswas with the alleged conspiracy. On the contrary, Dina Nath, despite the very lengthy and searching cross-examination to which he was subjected to in the Sessions Court, has adhered with

remarkable consistency to his original statements and except in a very few unimportant matters, his testimony has remained unshaken. That he has an exceptionally good memory is obvious, but even with that gift, an untruthful witness who had to undergo for several days the severe ordeal of a most minute and thorough cross-examination at the hands of several able counsel must inevitably have come to hopeless grief in at least one or two material particulars.

In these circumstances, while I fully appreciate the argument that an accomplice's evidence should not, as a general rule, be accepted unless confirmed by independent evidence, and while I do not overlook the facts that Dina Nath is on his own showing an unprincipled scoundrel and that he has in the present case probably minimised the parts taken by his relations, Jagannath and Ram Saran Das, in certain matters connected with the conspiracy, I am satisfied that he has given a substantially true and accurate account of all that he knows concerning the conspiracy and the proceedings of its members. It must be remembered moreover that his statements are in many very important particulars amply corroborated by evidence *aliunde*, and that none of the appellants has been able to assign any good and sufficient reason to explain his conduct in charging that particular individual with complicity in this conspiracy. Balraj and Balmokand practically disown all knowledge of Dina Nath. Balmokand does not attempt to assign any motive which could have induced Dina Nath to implicate him, and all that Balraj alleges in this respect is that Dina Nath belongs to a rival section of the Arya Samaj to that to which he and his father L. Hans Raj belong ; that Dina Nath was anxious to save his own relations and as he had to name somebody, introduced his (Balraj's) name ; and that the Muhammadan police who " predominate at Lahore," were at the bottom of the case.

Abad Bihari frankly stated, when questioned by the Additional Sessions Judge, that he could suggest no reason why Dina Nath should have invented this long story against him ; Amir Chand has given no explanation, and all that Basant Kumar Biswas can state

is that he has been charged because Dina Nath wished "to save himself." In this connection it is also to be borne in mind that none of the appellants made any statements to the Committing Magistrate and that in the Sessions Court they all presented written statements which were clearly prepared with the aid of the legal gentlemen who respectively represented them. It is thus a very significant fact that none of the accused persons, except Balraj, attempted in those statements to explain why it was that Dina Nath had falsely charged him and that the explanation given by Balraj is ludicrously insufficient.

(G) The next point urged by the defence relates to the genesis and nature of the alleged conspiracy. According to the charge, as amended on the 11th July 1914, the allegation against the accused persons was that between the 27th day of March 1913 and the 31st day of March 1914, both at Lahore and other places in British India they did agree with one another and with certain other persons, to commit the offence of murder under section 302, I.P.C., and were thereby parties to a criminal conspiracy to commit the offence of murder; in pursuance of which conspiracy a murder, to wit the murder of Ram Padarath, was committed at Lahore on the 17th May 1913, and that they thereby committed offences punishable under sections 302/120-B., I. P. C., and 302/109, I. P. C.

The defence contend that while the charge states that the conspiracy commenced on the 27th March 1913 and was alleged to be for the one specific offence of committing murder, the prosecution have adduced evidence relating to events which are said to have taken place in 1908, 1909, 1910, 1911 and 1912, and to matters connected rather with the offence of disseminating seditious literature than with that of committing murder. They further urge that according to the evidence of the approver, the alleged conspiracy was entered into in October 1912 and that the only persons who, according to that evidence, joined in that conspiracy were Rash Bihari Bose, the approver himself, Abad Bihari and Balmokand, and that no evidence has been given to support the allegation that any of the other accused persons joined that conspiracy after it had been

so formed. In my opinion, these contentions are based upon a fallacy. The Additional Sessions Judge in the first paragraph of his judgment explains that, as originally framed, "the charge against the accused persons cited the first of October 1910 as the date on which the agreement began which eventually constituted the conspiracy." But in view of objections urged by the counsel for the defence, the date was subsequently altered to the 27th March 1913, that being the date on which Act VIII of 1913, which added section 120-A and 120-B to the Indian Penal Code, came into force. But the case for the prosecution is not that this alleged conspiracy came into being *ex uno actu* or on any precise date. They allege that its growth was gradual, and that it developed in course of time as the ultimate result of the pernicious campaign of sedition inaugurated in 1906 and 1908 by one Hardyal who visited the Punjab in those years with the express object of fostering discontent, especially among the student class. This Hardyal who is described by Amir Chand as a former "brilliant" student of the St. Stephen's School and College, Delhi, proceeded in 1904 to England to complete his studies at St. John's College, Oxford. He held a Government Scholarship of £200 a year tenable for 3 years but after enjoying the emoluments for about 2½ years, decided that it was contrary to his principles and conscience to receive monetary aid from a Government of which he did not approve, and surrendered the scholarship, thereby sacrificing the emoluments for the last 6 months. During his visits to this country in 1906 and 1908, he delivered lectures which appear to have been attended by a considerable number of young men, among whom were the witness Mr. J. M. Chatterji (P. W. 199) and the approver Dina Nath. His doctrines as explained by these two witnesses, were at that time those of a passive resister. He advocated the liberation of India from the foreign yoke, but so long as he was in this country, he confined his suggestions within the limits of a boycott of Government and of Government service. On his departure from India, his mantle, according to Dina Nath and Mr. J. M. Chatterji, descended upon the appellant Amir Chand to whom such of his followers as had assembled at the Delhi Railway Station to bid him

farewell, were introduced and to whose house they all subsequently proceeded. It is clear from the evidence of these two witnesses that Amir Chand was regarded by all concerned as the successor of Hardy, and that it was to him that they were thereafter to look for guidance and precept. It is also abundantly clear from the same evidence that the fathers of Dina Nath and Chatterji objected very strongly to their sons' proceedings. Chatterji states that when he was staying at Lahore at L. Lajpat Rai's house with Hardy, his father arrived, sent for him and ordered him to go back home at once. Dina Nath's father, on hearing that his son was staying with Amir Chand, proceeded to the latter's house in Delhi and angrily asked him what he meant by "leading other people's children astray." L. Raja Ram, Assistant Engineer (P. W. 41), corroborates Dina Nath as regards the visit of Gajju Mal. Dina Nath's father, to Amir Chand for the purpose of taking his son away, and he further adds that Gajju Mal complained to him that his son had been "misled by some political-mongers." Obviously, therefore, the views of Hardy and presumably also those of his successor, Amir Chand, did not commend themselves to respectable and loyal Indian gentlemen of the type of these two fathers. It is quite in keeping with the character of this man Hardy, as disclosed by the documentary evidence on the record, that he should not venture, while in India, to advocate violence, but there can be no doubt from his later writings that this was due rather to prudence than to moral scruples, and in any event it is evident that it was he who sowed the seed which afterwards fructified. After leaving India, he appears to have wandered about from place to place until he eventually settled down in the U. S. A. in February 1911, and during the whole of this period his letters which are on the record show that he was extremely cautious in expressing his views on political matters. But once he felt that he was himself quite safe "from the clutches of the American law" and realised that after 3 years' residence by the rule obtaining in the U. S. he could not be extradited (see Exhibits P. 24, 0-3 and 0-4) he published in America a newspaper in Gurmukhi and Urdu, which openly and defiantly advocates mutiny in India, and glorifies such murderers

as Khudi Ram Bose, Parphan Chaki, Kanhaya Lal, the Egyptian Ali Wardian, and "that brave man of Bengal, Hemchander Das, " who went to Paris and learned the art of bomb making and on " his return to Calcutta, established a factory for bombs and began " to teach other young men how to make them," [see Exhibits P. 177 (1) and (2), copies of the "*Ghadr*" newspaper bearing dates respectively 1st and 8th November 1913]. In the light of his own conduct, it is somewhat curious to find him from his safe retreat in California, ingenuously admitting that as "the harbinger of freedom," he preferred to direct a rebellion from abroad, but at the same time upbraiding his countrymen for being "a timorous lot" who can "only talk; who have a great deal of patriotism in them but are mortally afraid of the police; they love freedom, but have a great dread of jail." Ex. P. 177 (2).

I refer to these passages because there can be no doubt that it was Hardyal who originated the plan of campaign which the course of time developed into a conspiracy to murder, though according to the defence this very Hardyal was an inoffensive, high-souled reformer whose teachings were opposed to all forms of violence, his gospel being described as one of mere passive resistance. None of the learned gentlemen who appeared before us for the appellants adopted the description given of Hardyal by Mr. Norton before the Sessions Court or referred to him as "a chivalrous gentleman" though we were told, on more than one occasion, that he was a man of high principles who would scorn to receive money from such "comparative strangers" as Hanwant Sahai. That is hardly the impression I get from the copy of the "*Ghadr*" printed as Ex. P. 177 (2), in which the following five duties are specified for the observance of his readers :—

"Your *first* duty is that you should regularly remit money to usYour *second* duty is to carefully read the paper.....Your *third* duty is to make others read the paper.....Your *fourth* duty is to send the paper to India by placing it in a coverYour *fifth* duty is to prepare to fight and die in the rising." In other words, the reader's first four duties are to subscribe to

the paper and to assist in extending its circulation, and the *fifth* duty (after having ensured the success of the paper) is to fight and die. That Hardyál is the author of these articles and that this pernicious newspaper, the *Ghadr*, is his property is abundantly clear from P. 23-A., a letter from Hardyál to Hanwant Sahai, dated 4th September 1913 (admitted by Hanwant Sahai to be in Hardyál's writing) and from the copies of the *Ghadr* printed as Ex. P. 24, 0-3 and 0-4. *Nemo repente turpissimus*, "and I find it difficult to believe that Hardyál, the author of Ex. P. 177 (1) and (2) and Ex. P. 177-A., was in 1908 a mere "passive resister," at all events to the knowledge of his more intimate friends, and it is proved by the evidence of his brother, Kishen Dyal (P. W. 167) that Amir Chand was one of those friends and had known Hardyál from boyhood. That Hardyál and his teachings exercised a very considerable influence upon his followers and that he was not forgotten even after he had left India are evident from the reference to him in the *Liberty* leaflet of the 20th July 1913 (Ex. P. 13-A) and from the poem in his honour and praise found in Sultan Chand's copy-book [Ex. P. 13 (D) (1)]. In 1909 after Hardyál's departure from India, another sinister character, Rash Bihari Bose, appears on the scene. In that year this man made the acquaintance of Mr. Chatterjee (P. W. 199) and by his importunity succeeded in obtaining from the latter the names of some of Hardyál's disciples, such as Dina Nath and Amir Chand. Chatterjee whose innate disinclination for work led him (as he explains) to adopt the profession, first of a *Sunyasi fakir* and subsequently of a barrister, went to England in 1910, and has no recollection of giving Rash Bihari Bose a letter of introduction to Dina Nath. But the latter deposes, and I can see no ground for refusing to believe him, that shortly before Chatterjee's departure, Rash Bihari Bose was given such a letter, and later on met him, by appointment, at the Lahore Railway Station. About two or three months later Dina Nath again met Rash Bihari Bose, this time at the Kali Bari temple in Lahore, and subsequently in or about March 1911, they met for the third time at Hardwar on the occasion of the Guru Kul anniversary. At this meeting (as the defence elicited by their cross-examination

of Dina Nath, see p. 324) Dina Nath understood Rash Bihari Bose to be connected with Bengal anarchists and states that the latter enlogised the deeds of the murderers, Khudi Ram and Kanhya Lal. Chatterjee deposes that among the names of Hardyal's disciples which he gave to Rash Bihari Bose was that of Amir Chand and it is, I think, a fair inference from the fact that Rash Bihari Bose lost no time in making the acquaintance of Dina Nath, that he would have been equally prompt to make the acquaintance of Amir Chand, a man of some importance and influence in Delhi. The question arises, whether if he took advantage of Chatterjee's reference to Amir Chand and actually introduced himself to the latter in the same way as he did to Dina Nath, he would have met with a favourable reception and been received by Amir Chand as a friend, or (to use the expression so frequently referred to in the evidence) as an *achha admi*. Upon this point, I can have no doubt. Amir Chand held the strong anti-English views that characterised Hardyal, and we know from the evidence of Canon Allnutt (P. W. 107) that in 1908 serious objection had to be taken by the College authorities to his conduct in attending political meetings, and that in 1910 he became a political suspect and was under police surveillance. Amir Chand was thus the very man for Rash Bihari Bose's purposes. Imbued as he was with the views of Hardyal, his antipathy to British rule would certainly not decrease when he realised the irksome inconveniences of police surveillance, and while his social position would make him an eminently desirable colleague from Rash Bihari Bose's point of view, the circumstances in which he found himself in 1910 would probably lead him to welcome an agitator whose policy was so robust and advanced. That Rash Bihari Bose must have been acquainted with Abad Bihari for some time prior to October 1912 is, I think, clear from Dina Nath's account of the meeting at the Agarwal Ashram at which Rash Bihari Bose introduced the two men to each other. It is very improbable that Rash Bihari Bose would have disclosed his murderous plan of campaign, except to men whom he had known for some time, already put to the test, and found not wanting. In 1912 and from 1909 Abad Bihari had been living in the house of Amir Chand

and it is, I consider, a fair and legitimate inference that Rash Bihari Bose formed the acquaintance of Amir Chand and Abad Bihari shortly after he had obtained the name of former from Mr. J. M. Chatterjee, and that it was not long before he infused back-bone into the political views of his new friends. In March 1911 Dina Nath had no difficulty in realising that Rash Bihari Bose was connected with the Bengal anarchical movement and approved of bomb-throwing; in 1909 Rash Bihari Bose, when he practically forced his acquaintance upon Chatterjee, told the latter that he belonged to a Bengal "Yugantar Ashram" and left upon him the impression of being either a member of a secret society or a "braggart".

Beating all the facts in mind, I conclude that Rash Bihari Bose introduced himself to Amir Chand and Abad Bihari some time in 1910, and that it was not long thereafter that the political views of the two latter became decidedly more "advanced", and that in course of time the nucleus of the conspiracy to commit murder and to incite others to commit murder was formed. Of course it does not by any means follow, or do I suggest, that a man who is opposed to British rule in India or holds the views that India was intended for Indians is on that account prepared to advocate a mutiny or the murder of Europeans. Far from it. But there is clear documentary evidence on the record to prove that Hardyal and Amir Chand, so far from having any moral scruples in this respect, were quite prepared to advocate cold-blooded murder as a means to effect their ends. I have already set forth Hardyal's views as given in the copies of the *Ghadr* newspaper on the record, and, as regards those of Amir Chand, I need do no more than refer to the document admittedly written by him (Ex. P. 23-M) in which, after enquiring whether it is not "our imperative duty to get rid of the robbers, to struggle against the injustice and oppression of those who are not our well-wishers, whatever they may profess," he asserts that "half-hearted efforts, incomplete schemes, low aims will not do," and that "revolution and a general massacre of all the foreigners, specially the English, will and can alone serve the purpose." Amir Chand

does not deny the authorship of this article, but explains that being a man of impulsive nature and excitable temper, he wrote it at one sitting at a time when he was much annoyed at being refused an interview with the Chief Commissioner of Delhi with reference to police surveillance. He adds that he originally thought of sending it for publication to the *Modern Review*, but two or three days afterwards he reflected that the sentiments expressed in it did not really represent his "normal sentiments". He searched for it in order to make "the necessary alterations," but could not find it and forgot all about it. It is true that this document was written about January 1914, but a man who could at any time incite his countrymen to massacre all foreigners, has obviously no innate moral objection to the shedding of blood. Amir Chand's explanation, that the article was written in a moment of anger and did not express his normal sentiments, cannot be accepted by any one who has seen the original document. The article was first written out, and revised no less than twice afterwards, once in red ink and once in pencil.

As I understand the case for the prosecution, the conspiracy, developed in the manner I have suggested, but as members of a conspiracy work in secret and as in many instances persons join it from time to time, and not altogether on one precise date or at one particular meeting, it is clearly impossible for the prosecution to state in the charge the date on which the conspiracy came into existence or to give specific particulars as to the various persons who became members of it or as to the exact dates on which they respectively joined it. The prosecution do not allege that the conspiracy came into existence in October 1912 when Rash Bihari Bose, Dina Nath, Abad Bihari and Balmokand met at the *Agarwal Asharam* at Lahore. They assert that these persons, as well as others, had for some time prior to that meeting been agreed upon a policy of murder, but that nothing till then had been done to carry this policy into execution, and that the object of the meeting was to give practical effect to a plan of campaign already accepted, but till then not put into practical form or properly organised. They cannot

adduce direct evidence in further support of their allegations, other than such evidence as Dina Nath is able of his knowledge to supply, but they ask the Court to infer the existence of the general agreement from such acts and conduct of the various accused persons from time to time as they are able to prove. As observed by Mookerjee, J, in his learned judgment in *Pulin Bihari Das*' case (16 Indian Cases, p. 312): "It must be remembered that direct proof can scarcely be afforded of a conspiracy.....hence the Courts have consistently held that the prosecution is not obliged to prove that the persons accused actually met and laid their heads together and, after a formal consultation, came to an express agreement to do evil. On the contrary, if the facts as proved are such that the jury as reasonable men can say there was a common design and the prisoners were acting in concert to do what is wrong, that is, evidence from which the jury may suppose a conspiracy was actually formed. It is from this point of view that the overt acts may properly be looked to as evidence of the existence of a concerted intention; indeed, the conspiracy is usually closely bound up with the overt acts, because in many cases it is only by means of the overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt acts." To a like effect are the remarks of Coleridge, J. (*Rex v. Murphy*, 8 C. and P. at p. 310):—

"It is not necessary that it should be proved that these defendants met to concert the scheme, nor is it necessary that they should have originated it. If a conspiracy be formed, and a person joins it afterwards, he is equally guilty." And in a recent case, *Jenkins, C J* (1 L. R., XXXVII Calc., at p. 507) stated that, though there must be agreement, there need not be proof of direct meeting or combination nor need the parties be brought into each other's presence, the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. So, again, it is not necessary that all should have joined from the first, those who come in at a later stage are equally guilty, provided the agreement is proved. Finally, we have the *dictum* of Grose, J. (*Rex v. Briscoe*, 7 Rev Reps. 551) that "conspiracy is a matter of inference deduced from certain criminal acts of the parties accused done in pursuance of an apparent criminal purpose in common between them and which hardly ever are confined to one place."

In the case before us the prosecution allege that there was an agreement between the accused persons and others to commit murder and to abet the commission of murder. They are naturally unable to give direct proof of any such agreement, but they ask the Court to deduce the existence and nature of the agreement from the facts that certain members of the conspiracy actually did commit a murder ; that in the house of another member of conspiracy a bomb cap was discovered, and that all the accused persons were concerned, directly or indirectly, with the distribution of literature which was intended to incite persons to commit murder. If it be found that all these facts are established, it would be a fair and justifiable inference that the alleged agreement between the parties accused did in fact exist, and each and every member of the conspiracy is responsible for an offence committed in pursuance of the conspiracy, and it is not necessary to show that a particular member actually concerted the offence with the member who committed it (I. L. R , XXVIII Cal., 797). Mr Raghunath Sahai's argument, therefore, that Amir Chand is not proved to have been consulted with reference to the Lahore bomb outrage and should not for that reason be held liable for it, is erroneous. But, so far as *punishment* is concerned, a distinction must, I think, be drawn between the case of a person who joins a conspiracy before the actual crime which is the object of the conspiracy is committed, and the case of a person who joins it subsequently to the commission of such a crime. Section 120-B of the Indian Penal Code provides that " whoever is a party to a " criminal conspiracy to commit an offence punishable with " death, transportation or rigorous imprisonment for a term " of two years or upwards, shall, when no express provision " is made in this Code for the punishment of such a conspiracy, " be punished in the same manner as if he had abetted such " offence." If, therefore, A and B conspire to commit murder and B subsequently does commit murder, A is punishable as if he had abetted that murder (section 109, I. P. C.). But if B has already committed a murder before A conspires with him to commit murder, A would, in my opinion, be liable to be punished (if in point of fact no other murder is committed) only to the extent

provided in section 115, I. P. C. But in every such case the offence committed by a member or members of the conspiracy prior to the entry of A into the conspiracy would be a relevant fact as indicating the nature and objects of the conspiracy (*cf.* Mookerjee, J's remarks at p. 315 of Pulin Bihari Das' case, *ubi supra*).

Before leaving this part of the case, I have to advert briefly to the argument that the prosecution are in effect charging the accused persons with participation in several conspiracies, one being a conspiracy at Lahore, another at Delhi; one a conspiracy to commit murder or to abet the commission of murder, and another a conspiracy to commit the offence punishable under section 124-A, I. P. C. There is no foundation for this argument. The prosecution allege one general conspiracy, the object of which is to commit or to abet the murder at Delhi, Lahore and other places in British India. They do not allege that there was one conspiracy at Lahore and a separate and distinct conspiracy, though with similar objects, at Delhi; according to them there was only one conspiracy of which all the accused were members, and that this was none the less so because certain overt acts, in pursuance of the objects of the conspiracy, were committed at Lahore while other overt acts were committed at Delhi. Nor, again, do the prosecution rely on the "Liberty" leaflets for the purpose of proving an offence of disseminating seditious literature. The leaflets in question are, no doubt, of a highly seditious character, but they are something more, inasmuch as they are a panegyric on murderers of the type of Khudi Ram Bose and the language employed amounts to a direct incitement to the commission of murder. It is with them in their latter character that the prosecution are concerned in this case, and it is not seriously urged that the accused persons and their counsel were not fully aware of this.

(H) I next proceed to deal with a theory which appeared to me to be singularly unconvincing and baseless but which was put forward strenuously by Mr. Sen and Mr. Raghunath Sahai both in the Sessions Court and before us. It is suggested that the whole case against Amir Chand, Abad Bihari, Hanwant Sahai, Balraj,

Balmokand, Basant Kumar Biswas and Charan Das is the outcome of a wicked plot on the part of the police in general and of the C. I. Department in particular; that the subordinate officers of the C. I. D. were much chagrined at their inability to trace the perpetrators of the Delhi and Lahore bomb outrages, and realising that this failure on their part reflected seriously upon their efficiency devised a plan, whereby, through the agency of their spy, Rash Bihari Bose (who was thereafter to be put forward as the leader of a dangerous anarchical society) literature and articles of an incriminating character were to be foisted upon unsuspecting persons; that in pursuance of this plot Rash Bihari Bose in January and February 1914 visited the houses of Amir Chand and Abad Bihari at Delhi, of Charan Das at Gurdaspur and of Khushi Ram at Lahore, was hospitably received as any inoffensive person who happened to be a friend or acquaintance would have been received, and that before his departure he in each case requited the hospitality he had received by concealing in their houses and among their own things such articles as "Liberty" leaflets, the bomb cap and the other articles which were found in their respective houses, but of which they repudiate ownership or knowledge, and that it was only after he had completed this business that the subordinate officers in question informed Mr. Petrie that the time was ripe for the searches of the houses at Delhi and Lahore.

The grounds upon which this theory is based are as follows:—

- (i) Mr. Petrie obtained warrants for the searches at Delhi from the Joint Magistrate of Alipur on the 4th February 1914; left Calcutta on the 5th February and instead of stopping at Delhi, proceeded to Lahore where he stayed till the 11th February; he reached Delhi on the 12th February, but deferred the search of Amir Chand's house till the 16th February while Dina Nath's house at Lahore was not searched till the 18th February. The suggestion is that this delay was due to the fact that Rash Bihari Bose had not had time to complete the task allotted to him earlier,

and it obviously implies that Mr. Petrie either knew or must have suspected that his subordinate officers were up to some trickery. His own explanation is simple and straightforward. The search warrants he had obtained on the 4th February were granted under the Press Act, Mr Petrie having reason to believe that "Liberty" leaflets were to be found in the houses of Amrit Chand and certain other Delhi people; he had also heard that leaflets had been sent to Lahore in November or December 1913 for distribution there, and before making any search at Delhi he went on to Lahore to consult with the authorities there and to arrange that searches at Lahore should coincide with searches at Delhi, on his arrival at Delhi on the 12th February he decided to defer the search of Amrit Chand's house as the local police had informed him that they suspected certain other persons as well and he thought it better to effect all searches simultaneously. On the 16th February the houses of Amrit Chand and Abad Bihari were duly searched and the bomb cap discovered in the house of the former, with the result that Amrit Chand and Abad Bihari were arrested the same day. Before proceeding I may here note that, if Rash Bihari Bose was a police spy, he was singularly remiss in giving information to his employers, as though he had completed his task at Delhi before the 5th February and had reached Lahore on the 13th February, having prior to his departure from Delhi left certain of his own belongings and (as the defence contend) such incriminating literature as the manuscript copy of the *Talaar*, Ex P 11 in Abad Bihari's house, Mr. Petrie on the 16th February was still under the impression that Abad Bihari was living with Amrit Chand and, on discovering his mistake, had to hurry off from Amrit Chand's house to get a warrant from

the Deputy Commissioner, Delhi, for the search of Abad Bihari's house, the situation of which he discovered from Amri Choud.

In my opinion, Mr. Petrie has satisfactorily explained the delay effecting the searches and I cannot for a moment entertain the suggestion that he would have lent himself to despicable trickery of the kind suggested. Nor can I believe that an officer of his standing and experience would have failed to discover the plot if his subordinates had attempted to delude him by secretly and without his knowledge, concocting any such scheme.

(22) No serious attempt was made by the police to arrest Rash Bihari Bose and he was allowed to escape.

It appears that before making his searches at Delhi, Mr. Petrie obtained an order from the Chief Commissioner authorising the Post Master to intercept letters addressed to certain persons and to make them over to him. On the 17th February, the letter, Ex P-33, dated Lahore, 14th February 1914, addressed to Abad Bihari, was handed to Mr. Petrie and the latter, in consequence of a statement made to him by Abad Bihari, telegraphed the same day to Mr. Stead, P. W. 36, at Lahore, directing the arrest of Dina Nath and Rash Bihari Bose, who was "believed to be staying with Dina Nath." Ex P-33 purports to have been written by one "M. S." but was really sent by Dina Nath. It runs as follows :—

" DEAR BROTHER,

" NAMASTEE

" Yours of the 12th instant to hand. I am glad to inform you that
 " your friend has come here. He reached here yesterday
 " morning safe and sound. All his letters should be sent to
 " my address. There is no need of your coming here now.
 " More in my next. Please remit money at your earliest convenience.
 " Hence. Yours sincerely, " M. S. "

The "friend" referred to is Rash Bihari Bose and "M. S." was the *nom-de-plume* used by Dina Nath when corresponding with Abad Bihari (*cf.* Ex. P. 34). From Mr. Petrie's evidence it is quite clear that he was informed by Abad Bihari that the letter came from Dina Nath and that Rash Bihari Bose was "the friend," and from the purport of the letter Mr. Petrie must have concluded that Rash Bihari Bose was staying with Dina Nath. On receipt of Mr. Petrie's telegram, which was in cipher, Mr. Stead (P.W. 36) on the 17th February ordered Dina Nath's house to be searched and had Dina Nath arrested on the 18th. Rash Bihari Bose was not at Dina Nath's house and it was not until the 20th February that Mr. Stead received reliable information that Rash Bihari Bose had been in Lahore. When he received that information, he examined the accounts of the Kashmir Boarding House and being satisfied that his information was correct, at once endeavoured to effect the arrest of Rash Bihari Bose who had, however, fled from Lahore as soon as he heard of the search of Dina Nath's house. After reading this evidence, I can find no ground for supposing that Mr. Stead was deliberately conniving at Rash Bihari Bose's escape or that he made no serious effort to arrest him. Moreover, if it was intended by the police that Rash Bihari Bose should escape, why did Mr. Petrie in his cipher telegram expressly direct his immediate arrest?

Both Mr. Petrie (P. W. 5) and Mr. Denham (P. W. 203) have sworn positively that they never heard of Rash Bihari Bose till February 1914. Mr. Petrie heard his name for the first time from Abad Bihari on the 16th February, and Mr. Denham when he received a telegram relating to the house searches at Delhi.

It is incredible that these two officers should have remained in entire ignorance of the existence of the man had he really been a spy in the employment of their Department.

The sole foundation for this ingenious theory is that when H. E. the Viceroy was staying in camp at Dehra Dun in July 1913 after the bomb outrage at Delhi, Rash Bihari Bose was introduced by one Dr. Mookerjee to Deputy Superintendent Shushil Chandar Ghose (P. W. 202) who, on a subsequent occasion, in July 1913, asked Rash Bihari Bose "about arrivals and departures of stranger Bengalis," but got no real information from him. Dr. Mookerjee is a well-known resident of Dehra Dun and as he had told the Deputy Superintendent that Rash Bihari Bose was well acquainted with Bengalis and could be relied upon, it is not surprising that the Deputy Superintendent tried to get information from him. This is far, however, from saying that Rash Bihari Bose was a spy in the employ of the C. I. D. As a matter of fact, Rash Bihari Bose made capital out of his acquaintanceship with the Deputy Superintendent which was valuable asset to him, and enabled him to pose as a loyal and respectful citizen. He informed Atul Chandar Ghose (P. W. 176), the Manager of Tagore Villa, that he was on visiting terms with the Deputy Superintendent, and supplied him with information about the movements of Bengalis; he made himself prominent at a public meeting at Dehra Dun held for the purpose of denouncing the attempt on the Viceroy's life; and he even told the witness Shohindra Nath Chatterjee (P. W. 186) that he possessed a police pass which enabled him to go into the Viceroy's camp. The defence frequently referred to this pass as if its grant to Rash Bihari Bose had

been proved, whereas the sole evidence as to it is the statement of this witness S N. Chatterjee who, however, says that all he knew about it is what Rash Bihari Bose told him, he himself having never seen it. But whatever object Rash Bihari Bose may have had for ingratiating himself with Deputy Superintendent Shushil Chandar Ghose and for posing at Dehra Dun in 1913 as that officer's friend and a loyal and trusted citizen, there is no evidence to support the theory that he was in fact a police spy. Mr. Denham has deposed that, so far as this case is concerned, Shushil Chandar Ghose has had nothing whatever to do with the investigation, and it has not been shown that Rash Bihari Ghose was known to any officer, subordinate or superior, who took part in that investigation, nor was any such officer questioned in cross-examination on the point.

- (iii) The paper which formed part of the bomb cap was taken from a newspaper and in the piece used for the cap there is a reference to a resolution passed by the *Tali Jati San Milani* at Calcutta on the 28th December 1913. Deputy Superintendent Shushil Chandar Ghose deposes that Rash Bihari Bose visited him at Calcutta on the 28th or 29th December 1913, and we are asked to infer that it was Rash Bihari Bose who brought with him from Calcutta a newspaper containing an account of the aforesaid meeting and used part of it for making the bomb cap which he secreted in the room "Z" of Amir Chand's house.

Mr. Denham (at p. 298 of the record) states that two newspapers, the *Bengali* and the *Amrita Bazar Patrika* of the 30th December 1913 issue, contained "passages of the resolution exactly the same as on the paper of Ex. 15" (the cap), and we find from

the evidence of Mr. Petrie (at p. 57) that the tin in which the bomb cap was concealed was wrapped in a piece of newspaper and that this piece was taken from a copy of the *Amrita Bazar Patrika* bearing date 20th November 1913. It is hardly likely that Rash Bihari Bose was travelling about with files of the *Amrita Bazar Patrika* upon him, nor is it suggested that he was in Calcutta on the 20th November 1913, and I think it far more probable that the person who made the cap was a subscriber to that paper and had copies of it lying about in his house. At all events, there is nothing in this fact to support the suggestion that the cap must have been made by Rash Bihari Bose, and could not have been made by Amir Chand or Abad Bihari.

- (iv) Puran Singh (P. W. 181) deposes that in 1913 he travelled in the same railway compartment with Rash Bihari Bose and that he (the witness) complained to Mr. Mercer that Rash Bihari Bose had put "impertinent questions" to him about his movements, "just like a policeman". The inference we are asked to draw is that Rash Bihari Bose was acting as a spy for the C. I. D. and endeavouring to find out all he could about the witness. But there is absolutely nothing to show that Puran Singh was ever suspected by the police or that they were keeping a watch upon his movements. On the other hand, he is the "Beloved Puran" of Ex. P. 14 (a) and an intimate friend of Amir Chand; he knew the witness, J. M. Chatterjee, and also Hardyal, and he was told by Chatterjee that he (Chatterjee) had become a disciple of Hardyal. It may be that Chatterjee mentioned his name among those of other disciples of Hardyal to Rash Bihari Bose and that the latter, who apparently lost no opportunity of getting

acquainted with Hardyal's disciples, hoped to enlist him also as a member of the conspiracy, and with this object in view was importunate in the questions he put to him.

- (21) A similar remark applies to Rash Bihari Bose's anxiety to discover from the witness Chatterjee the names of Hardyal's disciples. This occurred in 1909 or 1910, and even the defence do not suggest that so long ago as that Rash Bihari Bose was in the employ of the C. I. D. On the other hand, if he has been so many years in that employ and engaged in finding out important scraps of information about every one with whom he came into contact, it is impossible to believe that Mr. Petrie and Mr. Denham would have known nothing about so useful and so ubiquitous a spy.
- (22) The last ground is that the prosecution have produced a photograph, Ex. P.-118, of Rash Bihari Bose ; but as they have not shown how they became possessed of it, the inference is that the latter gave it to them for the purposes of this case. I think the explanation of the Additional Sessions Judge, that this was an oversight on the part of the prosecution, is far more probable, and that it is just as likely as not that the photograph was found in Rash Bihari Bose's house or in that of his relation Shrish Ghose, at Chandernagore, when Mr. Denham searched those houses in March 1914.

It appears to me that the theory propounded by the defence had nothing to support it, except improbable surmises and unjustifiable inferences. On the other hand, in addition to the express denials of Mr. Petrie and Mr. Denham, there are many facts which tell strongly against this theory.

In the first place, it is not explained how the police spy, who had wormed himself into the confidence of Amir Chand, could,

without the gravest risk of detection, make his way up to the top storey of his friend's house, enter the room "Z," which was generally kept locked, and there secrete the biscuit tin containing the bomb cap and the bottle of petrol (Ex. P.-18) which was found standing up. The witness, Sultan Chand, P. W. 201, his mother and other ladies lived on this top storey and according to Amir Chand, the key of the room was kept either by Sultan Chand's mother or an old servant named Raghu. How, then, did Rash Bihari Bose who, as Amir Chand would have us believe, was an entire stranger and was visiting him for the first time at the end of January 1914, manage to get up to this room on the top storey, unlock the door, conceal the tin and bottle and then successfully make his way down again to his own room? Would it not have been far easier for him and much more effective to conceal the articles in the room actually occupied by Amir Chand himself at a time when Amir Chand was not in the house? On the other hand, if it was Amir Chand or Abad Bihari, or both, who had made the bomb cap or had received it for safe keeping, the locked room at the top of the house, which was hardly ever entered by any one, would naturally suggest itself as the safest and most convenient place in which to keep so compromising and dangerous an article.

In the next place, there are certain letters on the record which are quite inconsistent with Abad Bihari's and Amir Chand's assertions that they met Rash Bihari Bose for the first time in January or February 1914, and that till then they had no knowledge of him. The letters I refer to are the following :—

- (1) Ex. P.-33.—The letter, dated "Lahore, 14th February 1914," from Dina Nath to Abad Bihari, the terms of which I have given above. This refers to Rash Bihari Bose who is spoken of as "your friend".
- (2) Ex. P.-34.—Another letter, from Dina Nath to Abad Bihari, dated Lahore, 16th February 1914.—Here, again, reference is made to "your friend" and Abad Bihari is informed that his friend has received his

letter and intends to stay in Lahore for three or four days after which he will go direct to him.

As regards Exs. P.-33 and 34, Abad Bihari in his written statement professes to know nothing about their writers or their contents. Dina Nath swears that he wrote them, and if this is a lie, why did not Abad Bihari explain how such letters came to be addressed to him? They were written at a time when Dina Nath was at liberty and under no apprehension of arrest, so it cannot be said that he was induced by the police to write them for the purpose of implicating Abad Bihari, and, as a matter of fact, until he received Ex. P.-33 from the Post Office at Delhi, Mr. Petrie had no knowledge that Rash Bihari was at Lahore, while, according to Mr. Stead, the Lahore police did not find out that Rash Bihari Bose was in Lahore until the 20th February. If then Dina Nath did not write these letters, who did and for what purpose?

- (3) Ex. P.-35.—This is a letter which has been proved by the evidence of Mr. Trioup (P. W. 102) and Bal Dattjish (P. W. 103) to be in the handwriting of Rash Bihari Bose. It was sent by registered post, addressed to Abad Bihari, and was intercepted in the post and handed over to Mr. Petrie. It bears date 16th February, begins with the words "Dear Brother," acknowledges receipt of a letter, dated 14th, from Abad Bihari (and as to this, compare Ex. P.-34); and is couched in terms which would be mysterious or unintelligible, except to a friend with whom the writer was on somewhat intimate terms. Would a comparative stranger understand, for example, the words "After keeping in hand Rs. 100 *for our business*, will you be able to spare another equal sum *for them*?" It would be most advantageous if

you can do that, *as they are having a very bad time there*. Of course if it can't be helped, it does not matter and you need not trouble yourself for that." The prosecution suggest that the meaning of the passage is that Rs. 100 were to be kept for the purposes of the Delhi-Lahore Conspiracy and that another Ps. 100 were, if possible, to be contributed towards the fund of the Bengal conspiracy. This suggestion may or may not be correct; but it is difficult to believe that the writer would use such cryptic language if the letter were addressed to a mere acquaintance and comparative stranger. Finally, we have the fact that Rash Bihari Bose intended to leave Delhi by the early morning train on February the 3rd, but was stopped by a telegram (Ex. P.-100) sent by Dina Nath from Lahore at 7 P.M. on the 2nd February 1914 and addressed to Abad Bihari. It is proved, and indeed, admitted, that on the 2nd February 1914 a ticket from Delhi to Lahore, *via* Bhainda, was purchased by Amir Chand; that this ticket was not used, and that, on the 3rd February, Amir Chand applied to the Railway authorities for a refund of the amount paid by him. He explains that he had intended to go to Lahore on the date mentioned to visit Rai Bahadur Ganga Ram, but that he missed his train and had (in consequence of other engagements) to give up all idea of this visit. Rai Bahadur Ganga Ram was not called as a witness to corroborate Amir Chand's statement, but it is, of course not impossible that Amir Chand had not informed him of the intended visit. At the same time, knowing that he was pressed for time, it is hardly likely that Amir Chand would undertake a long journey to Lahore on the mere chance of finding Rai Bahadur Ganga Ram at home. On the other hand,

it is proved beyond all doubt that Dina Nath did actually stop Rash Bihari from coming to Lahore on the 3rd February and he explains in his evidence that he did so because he thought it would be unsafe for a Bengali like Rash Bihari Bose to be seen in Lahore so soon after the distribution of "Liberty" leaflets in January 1914. The reason why Amir Chand and Abad Bihari disclaim all knowledge of Dina Nath's action on this occasion is obvious, when we remember why it was that Rash Bihari Bose's intended visit to Lahore was deferred. Personally I have not the slightest doubt that Amir Chand and Abad Bihari were fully aware of the reason for Dina Nath's action and realised as keenly as he did the danger Rash Bihari Bose would run if he arrived at Lahore at so critical a time.

Taking, then, all these facts into consideration, and seeing how slender is the foundation upon which the defence theory is based, I have no hesitation in holding that there is no ground for suspecting that Rash Bihari Bose was a police spy in the employment of the C. I. D., while there are very strong reasons for accepting the contention for the prosecution that he was an intimate political friend of the various accused persons and the active leader of the conspirators.

In this connection and before I pass on, I think it right to refer, and I do so with pleasure, to the repeated disclaimers by the learned gentlemen, who appeared for the accused persons, of any intention to impugn the absolute *bona fide* of the superior police officers whose duty it was to conduct the investigation in this case. Mr. Beechey, Mr. Sen, Mr. Raghunath Sahai, Mr. Nanak Chand, and Mr. Gokal Chand were at one in frankly acknowledging the fairness and impartiality of Messrs. Petrie, Denham and Stead, and on more than one occasion each of the learned Counsel repudiated the idea that any one of those officers had consciously been guilty of malpractice or unfairness. The learned Counsel deemed it necessary at times

to suggest that the police had been over-zealous or culpably negligent in the discharge of their duties, but in no instance did they impute want of good faith to the three officers in question, and criticisms of the latter's proceedings was strictly confined to the suggestion that their subordinates had skilfully misled them and had, in their absence and without their knowledge, resorted to those devices for concocting evidence which, despite the efforts of their superior officers, Inspectors and Sub-Inspectors of Police are traditionally supposed to employ. In my opinion, there is no justification whatever in this case for such insinuations against the subordinate police officers. On the contrary, I am satisfied that the investigation in these proceedings, which was of a particularly difficult and trying character, was conducted throughout by all the police officers concerned with conspicuous ability and commendable fairness. *

(I). My learned colleague in his order has dealt in great detail with the case of each of the accused persons and has, with characteristic lucidity of expression, given the reasons for the conclusions arrived at by him. With those conclusions I am in entire accord, and it is, therefore, not necessary for me to do more than to add one or supplementary remarks as regards each individual case.

(1) *Abad Bihari's Case.* (a)—Abad Bihari is a young man of great intellectual ability. He stood second in the 1st Division of the Punjab University B. T. Examination. There is, therefore, no inherent improbability in Dina Nath's statement that he was the author of the May and July *Liberty* leaflets.

(b)—That he was directly concerned in the matter of the various *Liberty* leaflets is proved by the fact that no less than 22 copies of the November leaflets [Ex. 13 (b)], and 35 copies of the "OM" leaflets [Ex. 13 (c)] were found in his box at Amir Chand's house [see Exs P.-22 (a) and (b), and P.-25] ; and that he presented copies of the July, November and "OM" leaflets to the boy Sultan Chand (P W. 201, see p. 293, line 23). It is further to be noted, as a fact entirely opposed to the theory, that these and other incriminating articles were placed in Abad Bihari's box by Rash

Bihari or some other police spy, that the copies of the November and "OM" leaflets were given to Sultan Chand by Abad Bihari so late as February 1914 (p. 294, line 27). Sultan Chand is, it is true, an approver, but there is no conceivable reason, nor has any been assigned, why he should give false evidence against his own adoptive father, Amir Chand, and the latter's intimate friend, Abad Bihari.

(c)—In the said box was also found Ex. P.-20 (a) described as a "Poison Manual." It is not too much to say that this is a document of the most atrocious character, and it is futile to argue that a person who kept such a document in his possession is an inoffensive, amiable student of a gentle disposition. It is certainly a striking coincidence that the studious Abad Bihari and that highly respected "educationalist" Amir Chand, who were living together for so many years, are found to be connected with literature which openly advocates murder, Abad Bihari being in possession of a vast number of *Liberty* leaflets and of this abominable "Poison Manual," while Amir Chand is the admitted author of that incitement to wholesale murder printed as Ex. P.-23 (M), which was also found in Abad Bihari's box.

(d)—Abad Bihari, in his written statement, asserts that he met Rash Bihari Bose for the first time in January 1914, but I have already referred to Exs. P -33, P-33 (a), P-34 and P-35 as furnishing proof that the two were intimate friends of some standing and not mere casual acquaintances.

(e)—Finally, there is the significant admission by Abad Bihari (see p. 307, line 50) that he can suggest no reason why Dina Nath should have invented "this long story against him." I agree, therefore, with my learned colleague, the Additional Sessions Judge, and the Assessors that the guilt of Abad Bihari has been fully established. There is no extenuating circumstance to be urged in his favour and he has very properly been sentenced to the extreme punishment awardable for the crime of which he has been convicted. His appeal is rejected and the sentence of death is confirmed.

(2) *Amir Chand's Case*.—My learned colleague's order has dealt exhaustively with this man's cause. The Assessors were unanimous in finding him guilty and there can, I consider, be no doubt that he was one of the principals in the conspiracy. His learned Counsel laid great stress upon the reputation he enjoyed among respectable Delhi residents as a philanthropical educationalist of blameless character. But Canon Allnutt (P. W. 107) deposes that so long as 1907 or 1908 he had to warn Amir Chand, who was then a master in the Mission College and School, that he must desist from attending political meetings under pain of dismissal, and Mr. S. K. Rudra (P. W. 110) states that for the last 8 or 10 years he had lost touch with him and that on asking him the reason why they did not see more of each other, Amir Chand informed him their "business lay in different directions." This evidence *per se* only tends to show that Amir Chand had taken to "politics," but the true character of the man is disclosed when we refer to Ex. P-23 (M) to which I have already made reference, and when we remember that it was to him that Hardy's disciples were handed over; that Abad Bihari was his intimate friend; that Rash Bihari Bose was admittedly staying with him in his house in January and February 1914; that Ram Lal and Sultau Chand were being brought up by him as seditionists; that he took an active part in the preparation of the "Liberty" leaflets of November 1913, and that a bomb cap was actually found in a locked room in his house.

I agree that this man has fully earned the capital sentence. His appeal is accordingly rejected and the sentence of death confirmed.

(3) *Balraj's Case*.—It has been satisfactorily established that this appellant was a member of the conspiracy and was actively connected with the distribution of the "Liberty" leaflets of the 3rd and the "OM" issues. I have no doubt, moreover, that his visit to Khushi Ram's house at 10 p.m. on the 19th February 1914 (at a time when Dina Nath's cousin, Ram Sarn, was also present) had reference rather to the affairs of the conspiracy than to a sudden desire to borrow a book from Khushi Ram. It is amply proved

that Rash Bihari Bose was staying with Khushi Ram in February 1914 and the probability is that Balraj's visit was made at so unusual an hour with the object of discussing what had happened to the arch conspirator. My learned colleague has set forth in detail his reason for finding that Balraj had joined the conspiracy by November 1913 and I agree with his conclusions. At the same time it is, I think, open to some doubt whether Balraj joined the conspiracy before the commission of the Lahore bomb outrage in May 1913. I see no reason to doubt Dina Nath's evidence as to his meeting Balraj at Nabha House in July or August 1911 and being introduced to him by Rash Bihari Bose, but *per se* this evidence does not show that Balraj was at that time a member of the conspiracy, as Dina Nath expressly states that the conversation that ensued was of "an ordinary kind." This would hardly have been the case had Balraj been at the time one of Rash Bihari Bose's disciples. As a matter of fact, the sole piece of evidence upon which the prosecution can base their allegation that Balraj joined the conspiracy before the 17th May 1913 is the letter addressed by him to Balmokand (Ex. P-119). This letter is admitted by Balraj and bears date, "23rd May morning 6 A.M." Both Mr. Ross Alston and Mr. Beechey are agreed that it was written in 1911, about one month before Balmokand's marriage took place; but while the former contends that its language necessarily suggests that Balraj and Balmokand were members of a criminal conspiracy, Mr. Beechey urges that it was a perfectly innocent letter written with the object of dissuading Balmokand, who was seriously ill at the time, from contracting a marriage tie. I have carefully considered the terms of the letter and the arguments addressed to us upon its real meaning. It is unquestionably a document open to grave suspicion and Balraj's explanation of the mysterious language used by him is by no means convincing, especially in view of the fact that Dr. Ram Gopal [D. W. (2)] who was then treating Balmokand did not find him to be suffering from consumption. Before passing on, I might here note that the Additional Sessions Judge is in error in assuming that this letter was written in May 1913 (see p. 31, last line but one). But while I concede that the equivocal language of the letter lends

support to the prosecution theory, I am not prepared to hold that it necessarily implies that Balraj had joined the secret society in May 1911. It is susceptible of a more innocent construction as it is just possible that Balraj's florid language had no deeper or more sinister meaning than that now ascribed to it by him and his learned Counsel, and its intention may have been simply and solely to dissuade his friend from entering into a marriage which would be irrevocable and might lead to life-long misery. It is also possible that Balraj, though not himself a member of the secret society was aware that his friend had joined it and was on this account urging him to refrain from marriage. While, therefore, I agree that the letter creates grave suspicion against Balraj, I think that there is an element of doubt and that Balraj is entitled to the benefit of that doubt. I am much influenced in arriving at this conclusion by the fact that when some 2 or 3 months later Rash Bihari Bose introduced Balraj, at Nabha House, to Dina Nath, he did not attempt to discuss with them what were euphemistically termed "political matters." By that time Dina Nath had thrown in his lot with Rash Bihari Bose, and the latter, as we find from the evidence, lost no opportunity of impressing his very advanced views upon those whom he had (in Dina Nath's language) already "tested". Had then Balraj also joined his party before that meeting, I have no doubt that Rash Bihari Bose's conversation would not have been of "an ordinary kind".

I agree, therefore, with my colleague that it is not clearly proved that Balraj was a member of the conspiracy prior to the date on which Ram Padarath was murdered, and, for reasons already given by me above, I think his punishment must be limited to the period of rigorous imprisonment prescribed by section 115, I. P. C. Balraj's appeal is, therefore, accepted *pro tanto* and his sentence reduced to one of seven years' rigorous imprisonment. This is the maximum sentence awardable under that section, but I agree that no lesser sentence would be adequate.

(4) *Balmokand's Case*.—This appellant was, in my opinion, one of the most prominent and active members of this conspiracy and

I have nothing to add to the reasons given by the Additional Sessions Judge and my colleague for convicting him of the offence charged and for inflicting the extreme penalty. The Assessors also were unanimous in their opinion that he was guilty. His main defence consisted in the *alibis* set up by him in order to prove that he was not in Lahore (1) on the 12th October 1912, when the Agaiwal Ashram meeting was held; or (2) in October, when according to Dina Nath, two bombs were made over to him for safe keeping and Dina Nath and Abad Bilhari paid him a visit, in order that the latter might take away one of the bombs to Delhi; or (3) in November 1913 when Dina Nath is alleged to have consulted him about the distribution of the third "Liberty" leaflets. These *alibis* have been fully discussed by the Additional Sessions Judge and my colleague and I agree with them that the *picas* have not been substantiated.

Balmokand's appeal is accordingly rejected and the sentence of death is confirmed.

(5) *The case of Hanwant Sahai*.—This appellant is a *Kaisth* of Delhi, aged about 31 or 32, and a distant relation of Hardyal. He was originally a clerk in the Delhi and London Bank at Delhi but left in 1907 or 1908 and since then appears to have been engaged in silk and other trade. His learned Counsel described him in argument before us, as a "piece-goods merchant". Very unfortunately for him Hardyal appears to have taken special interest in him and his affairs (see Exs. P. 32-C., dated "Oxford, April 14th, 1907" and P.-32 N.-2 which, though undated, must have been written, as the last line shows, when Hardyal was in India in 1908); to have carried on a more or less continuous correspondence with him, and to have been indebted largely to him for monetary assistance at various times in the years 1910, 1911 and 1912. But his training was to be "gradual" (Ex. P. 32-H), and until we come to the later correspondence in 1913, there is very little to be urged against the advice which Hanwant Sahai received from Hardyal. No doubt, in P. 32-N, he is told that the "Swaraj" of Allahabad "is good," and we have it from Mr. Sandys (P. W. 153), that this newspaper

has ceased to exist, its various editors having been convicted of sedition. But the letter was apparently written in 1908 and there is nothing to show that at that time the tone of the paper was seditious, and apart from the advice to read this newspaper, Hardyal's teaching, as set forth in his earlier letters to Hanwant Sahai, was directed mainly to a boycott of Government and of Government service (see P. 32 N-2 ; P. 32-H and P. 32-J.)

So far, then, as the letters belonging to Hanwant Sahai (which are included in the Ex. P. 37 series and were found in the house of Radha Mohan) go, there is little, if anything, to suggest that at any time during the period covered by them (1907—1912), Hanwant Sahai was in any way connected with this conspiracy or on terms of intimacy with L. M. Chand, Abad Bihari or any other of the accused persons. The utmost that can be said of him during this period is that he was a relation and pupil of Hardyal and was being taught to avoid Government servants and Government service; to eschew the career of a pleader as "the worst of all evils" (P. 32-J.), and to prefer making money by begging to earning it by honest labour.

In April 1913 shortly before the time when Abad Bihari, Balmok and Dina Nath were occupied in the preparation of the first series of "Liberty" leaflets, we find Hanwant Sahai at Lahore where he was staying for a few days with L. Panna Lal Mathur (P. W. 138), Professor of Philosophy in the Islamia College, Lahore. I see no reason whatever to doubt the general truth of the evidence given by Fazl Karim (P. W. 87) who was then a student in that College and deposes that he met Hanwant Sahai at Mr. Panna Lal's house on several occasions and that the latter told him that people should be taught "their glorious past" and urged to achieve national independence, the means employed being the formation of a Secret Society comprising three groups, one of which was "to be in charge of terrorising by means of bombs." Fazl Karim's evidence is substantially corroborated by that of Abdul Kadar (P. W. 89), and if it is true, as I believe it in the main to be, it shows that

Hanwant Sahai's political views had by April 1913 become pronounced and extreme. It is also proved by the evidence of Dina Nath, Fazl Karim, Mumtaz Ali (P. W. 90) and Maulvi Hakim Ali D. W. 4 for (Hanwant Sahai) that in May 1913 Fazl Karim received a packet of "Liberty" leaflets. The prosecution allege that this packet was sent to Fazl Karim for posting up in the Islamia College and for distribution among the students of that institution and that it was upon the suggestion of Hanwant Sahai that Fazl Karim was selected for this work. If such were the case, there can be no doubt that Hanwant Sahai must be held to have become a member of the conspiracy prior to the bomb outrage of May 17th 1913 in the Lawrence Gardens, and that by this action on his part he had shown an active participation in the work of the conspirators.

But while Hanwant Sahai's conduct undoubtedly gives rise to suspicion, there is no proof on the record that it was he who suggested the name of Fazl Karim, or that he was at the time a member of the conspiracy. On the other hand, the evidence, so far as it goes, seems to suggest the contrary. In the first place, Dina Nath, who was certainly one of the ringleaders, had not then seen or heard of Hanwant Sahai nor did he meet him at Lahore in April 1913, and in his evidence he tells us distinctly that it was Balmokand who mentioned Fazl Karim as a suitable person for the distribution of the leaflets. It may be urged that Balmokand obtained the youth's name from Hanwant Sahai, but here again there is the difficulty that it is not shewn that at this time Balmokand knew Hanwant Sahai. Abad Bihari, a resident of Delhi, probably did, but it is not Abad Bihari but Balmokand who instructs Dina Nath to send the parcel to Fazl Karim. Again, Dina Nath (p. 17, line 12) is quite positive that it was 20 days before the May examination that he, Abad Bihari and Balmokand met and decided to prepare and distribute the leaflets. The examination commenced on May the 5th and accordingly this meeting must have taken place on or about the 15th or 16th April, and Mr. Panna Lal, whose evidence I see no reason to doubt is clear that Hanwant Sahai left Lahore on the 11th April, two days before the "Prize-giving" (see p. 226, line 23). It is possible, of course, that there

was some earlier preliminary discussion among the conspirators about the preparation of the leaflet, but Dina Nath does not refer to any such and, so far as his evidence goes, we must take it that the first conversation on the subject took place at this meeting.

Furthermore, it is evident from the admission made by Fazl Karim and from the book and documents found in the rooms when searched, that as a student he was interested in politics and somewhat notorious for his extreme views. Among the documents and books referred to were included a work on "Yoga Philosophy" and one on "Revolution and Inspiration" and a proscribed newspaper called "Al Islam". In the circumstances it is quite possible that Balmokand had heard of or about him from other persons and considered him a suitable youth for the purpose of distributing the leaflets. But in the absence of any evidence to show that Balmokand got Fazl Karim's name from Hanwant Sahai or that the latter was at that time in any way connected with the conspiracy, I do not think we are justified in inferring from the conversations that Hanwant Sahai had with Fazl Karim that Fazl Karim's name was suggested by Hanwant Sahai to Balmokand and that, as a fact, Hanwant Sahai had knowledge at that time of the intended issue of the Liberty leaflets or of their contents. In all probability the draft was prepared by Abad Bihari some days after Hanwant Sahai's departure from Lahore.

I would, therefore, give Hanwant Sahai the benefit of the doubt and hold that he is not shewn to have joined the conspiracy prior to the date when Ram Padarath was murdered in the Lahore Gardens.

But I see no reason whatever to differ from the Additional Sessions Judge's finding that Hanwant Sahai was at one time a member of the conspiracy and that he joined it with full knowledge that it was formed for the purpose of committing and abetting murder and that a murder had actually been committed in pursuance of its policy. All the earlier correspondence with Hardyal which was more or less of an innocent nature (the Ex. P. 32 series) was

kept in the house of Hanwant Sahai's neighbour Radha Mohan and found there by the police. His correspondence with Hardyal, subsequent to May 1913, is of a far different character and shows that Hanwant Sahai was then known to Hardyal as ready and willing to take an active part in the work of the conspiracy [see Ex. P. 23 (A), dated 4th September 1913, a letter from Hardyal asking Hanwant Sahai to assist in extending the circulation of the newspaper which was to be published and which was subsequently published under the name of the "Ghadr"; Exs. P. 24-03, P. 24-04 and P. 177 are specimen copies of this newspaper]. And further from this later correspondence (which it is to be noted was found in Abad Bihari's box in Amir Chand's house) that Hanwant Sahai had decided that Hanwant Sahai was to join him in America in March 1914, obviously for the purpose of assisting him in the publication of the "Ghadr" and in his efforts to terrorise the Government of India and Europeans in this country [see Ex. P. 23 (A) and P. 23-D-J.]. But before leaving India Hanwant Sahai is "to finish the chief work" which he has to do there, namely, "to appoint such correspondents " in the (Native) States as may always send true facts re the administration of those places," and also "separate agents for distribution" [P. 23 (D.J.)]. He is moreover to send "addresses to which this newspaper (*i.e.*, the *Ghadr*) is to be sent" [Ex. P. 23 (A)]. These and other documents belonging to Hanwant Sahai were found, as I have remarked, not in the house of his neighbour, Radha Mohan, but in Abad Bihari's box at Amir Chand's house and were obviously being kept there for him. In this connection it is a somewhat striking coincidence that Hardyal's letter asking for addresses was found in the box of Abad Bihari, the same conspirator who supplied Dina Nath with the list of addresses to which the November "Liberty" leaflets were to be sent (see p. 22, lines 43-52).

Mr. Beechey argued, apparently in all seriousness, that Hanwant Sahai was a respectable "piece-goods merchant" and that the one and only object of his intended visit to America was to "sell curios" and to form agencies there for his business. This is also Hanwant Sahai's own explanation. But the explanation is

palpably absurd. If he was going on his own business, why should Hardyal give him instructions as to when he was to leave India? "It is my intention that you should start from there in the month of March and come here"—[Ex. P. 23 (A)]; "I shall send you full instructions for coming here, but not now. You should remind me about the month of March...You will live with me" [Ex. P. 23 (D. J.)]. Why, moreover, is a business man who proposes to visit America for the purpose of selling curios and of establishing agencies to pass some of his time as "a labourer, whether he needs it or not" because by living with labourers he will "acquire new experience and new thoughts?" And what is the necessity for such a person to "continue the study of French which is very necessary"? [Ex. P. 23 (A)]. He is also informed that it is "very necessary" for him to read Taussing's "Principles of Economics" and Bliss' "Encyclopædia of Social Reform," a course of reading which can hardly be regarded as essential for the successful sale of curios.

Hanwant Sahai's explanation is in fact ridiculous and there can be no possible doubt that it was under the orders of Hardyal that he was to go to America in order to assist Hardyal in the work of furthering the aims of the conspiracy in India. In my opinion, though there is some doubt as to whether Hanwant Sahai joined the conspiracy before the 17th May 1913, there is ample evidence on the record to show that at some time later that year he became actively associated with Abad Bihari and Amir Chand in India and with the work carried on in America by Hardyal for incitement to mutiny and murder in this country; and that he then joined the conspiracy with full knowledge of its aims and objects. As my learned colleague is prepared to accept my conclusions, Hanwant Sahai's appeal is accepted to the extent that his sentence is reduced to seven years' rigorous imprisonment (sections 120-B. and 115, I. P. C.).

(6) *Basant Kumar Biswas' Case*.—All three assessors were satisfied of the guilt of this appellant, and the Additional Sessions Judge and my colleague have, after full consideration of the evidence on the record and of the arguments urged on his behalf by his

learned Counsel, given conclusive reasons for agreeing with the opinion expressed by the assessors. I myself have no doubt whatever of his guilt and my only surprise is that the Additional Sessions Judge refrained from inflicting the capital sentence which this appellant so thoroughly deserved. As stated by my colleague, we had the appellant brought up before us and we found it impossible to accept the description of him given by the Additional Sessions Judge. In appearance he is by no means a mere youth, and his age, as given at p. 301 of the Record, was 24 in July 1914. Abad Bihari and Balmokand were stated to be 25 years old in that month, and there is, thus, no great difference between their ages and his. He did not strike us as being in any way "physically less developed than might be expected" of a man of his age, and we are not informed on what ground the learned Judge assumed him to be less than normally developed mentally. He may not be the social equal of Balmokand, Abad Bihari and Amir Chand, but that fact in no wise extenuates the part that he took in causing the murder of Ram Padarath and in the other proceedings connected with the conspiracy of which he was so important a member. Nor is it correct to assume that he was acting under the influence of that "dominating personality" Rash Bihari Bose, as the latter (so far as we know) was not in Lahore when the conspirators made arrangements for the commission of the dastardly outrage in the Lawrence Gardens. In that crime he took, and took voluntarily and readily, a most prominent part, and a few months later brought to Lahore two more bombs obviously intended for the purpose of killing more persons. In these circumstances it is idle to urge that as he was "not admitted to the full dignity of membership of the committee," but was treated "more as a tool than as a colleague," he is deserving of leniency. This is a very dangerous doctrine and would, if accepted, palliate the offence of every hired assassin. The learned Judge admits that "he knew perfectly well what he was doing," and in the circumstances there was no possible justification for not awarding to him the punishment meted out to Abad Behari, Balmokand and Amir Chand. His appeal is rejected and the application for enhancement of sentence preferred by the Local Government

is accepted, the result being that, in lieu of the sentence of transportation for life, Basant Kumar Bose is hereby sentenced to death.

(7) *The Case of Charan Das.*—The assessors were of opinion that this man was guilty of the offence charged against him, but the Additional Sessions Judge acquitted him on the ground that it was not so clear that the confession made by him to Mr. Shaw, Magistrate, 1st class, was “absolutely voluntary and spontaneous” as to justify its acceptance in evidence and that, in its absence, there was no sufficient proof that he was a member of the conspiracy. My learned colleague has dealt very fully with this case and I need say no more than that I am in entire agreement with him in holding that the confession, though subsequently retracted, is true, was made voluntarily and is open to no material objection. I also agree that quite independently of the confession there is ample evidence on the record to justify a verdict of “guilty”. The appeal of the Local Government under section 417, Criminal Procedure Code, is accordingly accepted; and, setting aside the acquittal of Charan Das, we convict him of the offence charged against him, under sections 120-B, 302/109, I. P. C., and sentence him to transportation for life.

Before concluding, I must briefly advert to a matter which Mr. Broadway under instructions from the Local Government brought to our notice at the close of the hearing. In its issue, dated 23rd October 1914, a newspaper called “India” republished “Delhi Sedition Trial,” a letter from a correspondent signing himself under the heading “Onlooker,” which appears to have been originally published on the 17th October 1914 in a paper called “The New Statesman”. In this letter the findings of the Additional Sessions Judge are adversely criticised, the evidence of the approver is said, “judicially speaking,” to have been insufficient “to hang even a cat on”; and the action of the police in arresting, and of the Committing Magistrate in not releasing on bail, certain of the accused persons who happened subsequently to be acquitted by

the Additional Sessions Judge, is severely animadverted upon. The writer further asserts that "some persons were harassed from day to day until they agreed to give evidence for the prosecution," and makes other similar allegations against the police.

The judgment of the Additional Sessions Judge was delivered on the 5th October 1914, and it is obvious, both from that fact and from the letter itself, that at the time when it was written, the writer had before him merely a Reuter cablegram giving the results of the learned Judge's findings and the sentences awarded to the various accused persons whom he convicted, and that he did not consider it necessary to defer his criticisms until he had had an opportunity of reading the judgment. The letter, in fact, is a somewhat puerile and prejudiced attempt of a partisan, ignorant of law and procedure, to vindicate his friends, and, so far as its author is concerned, might well be treated with contempt. But there was no possible excuse for the editors of the two papers whose publication of this letter at a time when the case was still *sub judice*, (as even on the absence of appeals by the convicts, the three capital sentences had necessarily to come before this Court for confirmation), amounted to a gross violation of the accepted canons of respectable journalism. We can only regret our inability to do more than to express, in the strongest terms possible, our disapproval of this action on their part.

LAHORE :

Dated 10th February 1915. }

H. A. B. RATTIGAN,

Judge.

THE NIMEZ TEMPLE MURDER CASE.

JUDGMENT.*

IN THE COURT OF JUDICATURE AT FORT WILLIAM
IN BENGAL.

The 28th January 1915.

CRIMINAL JURISDICTION.

PRESENT :

THE HON'BLE MR. JUSTICE SHARFUDDIN

and

THE HON'BLE MR. JUSTICE COXE.

IN THE MATTER OF

THE EMPEROR

versus

In Reference 27 and Appeal 826 of 1914.	}	MOTI CHAND PADAM CHAND SHAHA ... <i>Accused</i> , and BISHUN DUTT DWIVEDI ... <i>Appellant</i> .
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In appeal No. 829 of 1914.

In reference No. 27 under section 374, Cr. P. C., and appeal No. 826 of 1914.

For the accused :—Babus D. Sanyal, Jogendra Nath Mojamdar, Rajendra Prasad, Tribhuban Nath Sahai, *Vakils*.

For the Crown :—Mr. Sultan Ahmad, *Deputy Legal Remembrancer*, Mr. P. C. Manick, *Counsel*, and Rai Sahib Jwala Prasad, *Vakil*.
and

In appeal No. 829 of 1914.

For the accused :—Babus Jogendra Nath Mojamdar, Rajendra Prasad, Tribhuban Nath Sahai, *Vakils*.

For the Crown :—Mr. Sultan Ahmed, *Deputy Legal Remembrancer*.

[*Wherever there is a reference to Pandit Arjuulal Sethi, the matter has been printed in italics.—Publisher.]

SHARF-UD-DIN, J.:—

This is a reference under section 374, Cr. P. C., for confirmation of sentence of death passed on Moti Chand. There is also an appeal on behalf of the above named Moti Chand and one Bishun Dutt.

Against the accused Moti Chand there were five charges, *viz.*, (1) under section 302, I. P. C., read with section 34 of the same Code, to the effect that he, Manik Chand, and two others in furtherance of the common intention of all, to cause death of Mohanth Bhagwan Das, did murder the mohanth; (2) under section 302, I. P. C., read with section 34 of the Code, for the murder of Bansi Dhar; (3) under section 394, I. P. C., for robbery in committing or in attempting to commit which hurt was caused to Mohanth Bhagwan Das and Bansi Dhar by the accused and others jointly concerned in the robbery; (4) under section 302, read with section 109, having abetted the murder of Bhagwan Das by Zorawar Singh and Jai Chand, either or both; (5) under section 302, read with 114, I. P. C., with having the abetment of the murder of Bansi Dhar being present?

Bishun Dutt was charged with the offence of abetment at Jaipur (an independent Native State) and also at Benares and Mirzapur in British India as set out in the first three charges against Moti Chand. The town of Jaipur being outside British India a certificate (Ex. I.) under section 188, C. P. C., given by the Resident at Jaipur was obtained and is on the record. It is to the effect that the charges of abetment at Jaipur should be enquired into in British India.

After a lengthy trial in which 71 witnesses were examined on behalf of the Crown and none on behalf of the defence, the Assessors found Moti Chand guilty under section 394, I. P. C., guilty of the murder of the mohanth, but not guilty of abetment of that murder, and not guilty of the murder of Bansi Dhar, but guilty under section 114, I. P. C., of the abetment of the murder of Bansi Dhar.

The learned Sessions Judge of Shahabad concurring with both the Assessors found Moti Chand guilty of the first, third and the fifth charges convicted him thereof. In other words, he found him guilty of the murder of Mohanth Bhagwan Das under section 302, read with section 34, I. P. C., of robbery, in committing which hurt was voluntarily caused under section 394, I. P. C., and of the murder of Bansi Dhar under section 302, read with section 114, I. P. C. Concurring with both the Assessors the learned Sessions Judge found him not guilty of the second and fourth charges and acquitted him of the said charges.

Concurring with both the Assessors the learned Sessions Judge found B'shun Dutt guilty of each of the two charges against him under section 394, read with section 109, I. P. C., and convicted him thereof, and differing from both the Assessors found him not guilty of the charges of abetment of murder and acquitted him of the said charges.

The sentence passed on Moti Chand was that he should be hanged by the neck until he was dead for having committed the murder of the mohanth under section 302, read with section 34, I. P. C. A similar sentence was passed on him for the abetment of the murder of Bansi Dhar under section 302, read with section 114, I. P. C. The learned Sessions Judge did not think it necessary to pass any sentence upon this accused in respect of the charge under section 394, I. P. C., but in his judgment has indicated that in the absence of a conviction under section 302, I. P. C., he would have passed a sentence of ten years' rigorous imprisonment under section 394, I. P. C.

The learned Sessions Judge in consideration of the enormity of the offence has sentenced Bishun Dutt to 10 years' rigorous imprisonment and under section 59, I. P. C., has ordered Bishun Dutt to be transported for 10 years.

The occurrence, which was the subject of this trial, is said to have taken place at a place called Nimez in the Buxar Sub-Division, in the District at Shahabad. Bhagwan Das, one of the deceased, had a temple at this place of which he was the mohanth. He had a servant named Bansropan (P. W. 8) under him. Bansi

Dhar, a lad of 14 years of age, was called by the mohanth as a substitute for his elder brother Bansropan who had gone away to his home at Chowbey Chuck, without leave. The occurrence is said to have taken place between 9 and 10 p. m. of the 20th March 1913. The information (Ex. 8) of this occurrence was lodged by Ram Chander Ahir, choukidar (P. W. 17), on the 21st March 1913 at 1 p.m. at the Barahpur police station. In this information no one was directly accused, but the informant said "My suspicion is that it is not improbable that the *sadhus* who were present yesterday, and whose names and residence I do not know, have wilfully murdered the deceased." It is to be noted here that although two murders had been committed the informant knew of only one murder, namely, that of Bansi Dhar, at the time he started to lodge the information. The information was recorded by Head Constable Abdul Latif (P. W. 49). The Sub-Inspector Sheo Saran Singh (P. W. 50) happened to be away from the police station at the time the first information was lodged. He received the information of the occurrence at about midnight of 21st March 1913 and on receipt of the information he started for Nimez and reached it at 4 a.m. of the 22nd March, where he found Head Constable Abdul Latif (P. W. 49).

In the absence, however, of the Sub-Inspector from the police station, Head Constable Abdul Latif started for the temple after recording the first information. The choukidar who had lodged the first information accompanied him. At the temple he found Ganesh Dutt Chowbay (P. W. 53) and Bausropan (P. W. 8).

Abdul Latif tells us what he discovered at the temple and the condition of the dead bodies at the time. On arrival at the temple he first found the dead body of Bansi Dhar with his throat cut and blood all round and a gag in his mouth. He found also marks of blood all over the place where the body of Bansi Dhar was and also blood in the verandah of the temple. He also saw bloody footprints both in the room where Bansi Dhar's body was and outside the door. He further found the room west of the guddi closed and locked and upon the well he found marks

of blood. After a search he found the key and opened the door and discovered the dead body of the mohanth lying on a chairpoi and covered with a chuddar. On removing the chuddar he found the neck of the mohanth cut. After holding an inquest he despatched the bodies to Buxar for a post mortem report.

Abdul Latif then recorded a summary of the statements made by Bansropan. The statements made by Bansropan to this witness was that Bansi Dhai had gone to the temple only on the previous day, *i.e.*, the 20th March, as a substitute for himself, he being the permanent servant of the mohanth. He further said to this witness that 10 or 12 days before the occurrence a man who had gold *kils* in his teeth was employed by the mohanth as a cook and some four days before the occurrence three men had come and stayed at the temple.

On the arrival of the Sub-Inspector Sheo Saran Singh (P. W. 50) Bansropan made a statement to him also which he recorded. He also recorded the statements of Gokhool Ojha (P. W. 13) and Padmun Ojha (P. W. 12).

During the enquiry the Assistant Superintendent of Police, Mr. Hudson (P. W. 44) arrived and caused search to be made inside a well in the compound of the temple. A mullah was sent down the well who brought out a copper butlohi with some clothes tied with a rope to it and Bansropan told him that the clothes belonged to the 4 men who had come and stayed at the temple. A description of the 4 men was given by the witnesses who were examined by Sheo Saran Singh, Sub-Inspector, but their names and whereabouts could not then be ascertained. The result of the enquiry was that no trace could be discovered of the murderers. A descriptive roll (Ex. 5) was published in the local Gazette. During the enquiry, search was made in Benares and Mirzapur. A number of persons were at various times arrested upon suspicion, as their appearance corresponded with the descriptive roll of the suspects. An identification parade was held in each case and Bansropan was asked to point out in the parade any person whom

he had seen at the temple prior to the murder. This occurred in no less than five occasions. He every time denied that any persons in the parade were among the men whom he had seen at the temple. After all efforts to discover the whereabouts of the murderers had failed, a final report was submitted by the investigating police officer. The case was ordered to be entered as true. Any further enquiry was dropped.

A year after the incidents described above the first clue was obtained in a most remarkable manner.

An enquiry was set on foot in the case popularly known as the Delhi Conspiracy Case. Members of the Police and Criminal Investigation Department were engaged in this enquiry. It appears that the enquiry into the Delhi conspiracy case was a very extensive enquiry and covered a very large area. Some statements were made in the course of this enquiry by one Seo Narain (P. W. 3) at Bombay which gave the first clue to the temple murder which took place at Nimez on the 20th March 1913. *One Arjun Lal Sethi was a School Master at Jaipur. He was the Head of a Jain School and boarding house there. He had come to Indore to start a new Jain school there. In the course of the police enquiry into the Delhi conspiracy case, Arjun was arrested on a requisition of the Delhi Criminal Investigation Department. Inspector Karlekur (P. W. 4) of the Indore Police was deputed to make enquiries into the antecedents of Arjun. He discovered that when Arjun came to Indore he had brought with him several of his students, one of whom was Seo Narain who had gone to Bombay on some business of Arjun's.* Mr. Morony, Inspector-General, Indore Police, deputed Inspector Karlekur to search for Seo Narain and enquire from him regarding matters in connection with the Delhi conspiracy case. It appears that the Bombay Police had never heard of Seo Narain, but he was arrested as, on a search of his lodging, objectionable papers were found. He was arrested in view of the Viceroy's approaching visit to Bombay. This arrest took place on the 13th March 1914 nearly a year after the Nimez murder. On his arrest Seo Narain was closely questioned by Karlekur and a Bombay police officer and an

officer of the Criminal Investigation Department. It is important to note here that neither Karlekur nor the Bombay police had information of the double murder at Nimez; they had no interest in an event that took place at such a great distance a year before. There is no doubt that the descriptive roll of the 4 strangers was published in the Bihar and Orissa Gazette and copied by other Gazettes, but the Police Officers examined to prove this arrest and the statement that Seo Narain made, say that they had no information of the Nimez murder case. Karlekur and the Bombay police were then engaged under instructions on the bigger enquiry, namely, the Delhi conspiracy case, and it was during the course of this enquiry that Seo Narain was arrested and made a statement.

Karlekur says that he recorded the statement of Seo Narain. He sent the original to the Inspector of Police, Indore State, and kept a copy. *He also says that "he (Seo Narain) told me he had been in Arjun Lal Sethi's school at Jaipur. He said there was a boarding house and a Samiti in connection with it. He mentioned Manik Chand, Moti Chand, and Jai Chand as students of the Institution whom he had met at the boarding house. He also told me that Bishun Dutt had visited the boarding house in January 1913 and stayed three or four days. He told me that Jai Chand, Manik Chand and Moti Chand had gone on pilgrimage as they said. That, he said, was subsequent to Bishun Dutt's visit. He said that the three students were absent for 25 days and on their return they related in his presence what they had done during their absence. He said that they had said that they three and one Zorawar Singh had been to a place in the United Provinces or Bihar and Orissa near Mugalsarai to commit dacoity; and they had killed a Sadhu there, but could not get any of his money; that after committing the murder they threw away their clothes in a well in the Sadhu's house and that on their return journey they had stayed with a Bajpai residing at Benares. He said that when that story was narrated there were present Deo Chand (P. W. 6), Bal Chand (P. W. 5), Iswar Dhan and Putak Singh."* Karlekur says that the above statement was recorded on the 14th March 1913 and on the 15th Seo Narain

simply made corrections in his statements of the 14th. On the 14th he had said that he had overheard the story of the murder being told, and on the 15th he corrected it by saying that he was himself actually present when they told the story. Karlekur says that he got instructions from Indore to bring Seo Narain to Indore. Seo Narain was taken to Indore and a Head Constable of Bombay accompanied him. At Indore Seo Narain was made over to the Inspector-General, Mr. Morony, who deputed Karlekur to arrest Moti Chand and the arrest was effected on the 18th March 1914 at Indore. It was about this time that the Indore Police was apprised of the Nimez murder.

From the evidence on the record it is manifest that the Indore and Bombay Police had no knowledge of the Nimez murder, nor had they ever heard the names of Bishun Dutt, Moti Chand, Manik Chand and Jai Chand and Zorawar Singh before Seo Narain made his statements to the Bombay Police on the 14th and 15th March.

On the 18th March the Criminal Investigation Department, Delhi, telegraphed to the Deputy Inspector-General (Crimes) Bihar and Orissa. That telegram is Ex. 45 and is to the following effect:—

“ See paragraph 782, United Provinces Criminal Intelligence Gazette, 19th April last, reliable information received here. Please come at once bringing District Enquiry papers of case of Bhagwan Das Sadhu.”

The above telegram was received by Mr. Hampton (P. W. 61) who was at the time of the Nimez murder Superintendent of Police, Shahabad. He proceeded forthwith to Delhi where on the 23rd March 1913 he conferred with the Director and Assistant Director of Criminal Intelligence and saw a copy of Seo Narain's statements. On perusal of Seo Narain's statements Mr Hampton decided to reopen the enquiry into the Nimez murder case as obviously Seo Narain's statements referred to the murder at Nimez. At this stage Mr. Armstrong (P. W. 43), a Superintendent of Police, Central Provinces, was ordered to proceed to Indore to conduct an investigation into a matter in which the Nimez murder constituted only an

incident and he held it at Indore as that place was the most central for such an investigation. He arrived at Indore on the 27th March and was at once gazetted to the Criminal Investigation Department.

Mr. Hampton on his return to Allah deputed Rai Bahadur Sanyal (P. W. 67) to re-open the Nimez murder enquiry. He was further directed to proceed to Delhi with the Sub-Inspector Abdul Gani (P. W. 62) and Mohan Lal, Sub-Inspector, taking with him the connected papers and Tribeni Das, a chela of the Mohanth, who had been arrested on suspicion and Bansropan. Tribeni Das and Mohan Lal were examined in the Commitment Court. For good reasons shown and proved they could not be produced in the trial court. It appears that they were offered in the Commitment Court for cross-examination but it was declined. Their depositions have been put under section 33 of the Indian Evidence Act. It may here be stated that Manik Chand was arrested at Poona by Sub-Inspector Dhan Dhu (P. W. 23) on the 24th March, and brought to Indore on the morning of the 30th March. Rai Bahadur Sanyal and the two witnesses named above arrived at Indore. An identification parade was held by Captain Colvin, District Magistrate, Indore. Bansropan at this parade picked out Manik Chand and Moti Chand from among 15 persons as having been seen by him at Nimez when the Sadhu was murdered.

It is clear that at Indore there were present Seo Narain, Moti Chand and Manik Chand. There can be no doubt that Police Officers concerned were anxious to sift the matter thoroughly as the whole case depended on the identity of the accused. The occurrence had taken place more than a year before the date of the identification parade at Indore. Bansropan had seen the strangers at the temple only for a few days. It is not therefore surprising that the police officers conducting the enquiry were anxious to avoid the implication of innocent people, and for this purpose it was thought necessary to test if Bansropan would be able to identify any of those men who, he says, had stayed at the temple and had disappeared on the morning of the 21st March 1913. It must be remembered that Seo Narain had already made a statement wherein he had mentioned

the names of Moti Chand, Manik Chand and Jai Chand as the 3 students of Aijun's School who, on return from their expedition, had admitted that a Sadhu was killed by them at a place near Mogal Sarai. The Police Officers conducting the enquiry must have been anxious to confront Moti and Manik with Seo Narain and they did so.

On the 3rd April in the presence of Mr. Morony, Mr. Armstrong confronted Manik Chand with Seo Narain. The latter exhorted Manik Chand to tell the truth and himself repeated the statement which he had previously made to the police. Thereafter, on being questioned by Mr. Morony and Mr. Armstrong, Manik Chand made a statement of a confessional character which Mr. Armstrong recorded. It appears from the evidence of Mr. Armstrong that Manik at that time refused to disclose anything relating to any matters except such as occurred between the time when he alighted at Raghunathpur (the nearest station from the scene of murder) and the time of return to it. In the meanwhile efforts were made to trace Bishun Dutt mentioned by Seo Narain. An erroneous arrest was made at Benares and Manik Chand was told that Bishun Dutt had also been arrested. On this Manik Chand made a statement regarding Bishun Dutt which he was reluctant to make before. In consequence of this fresh statement of Manik Chand efforts were made to cause the arrest of the real Bishun Dutt. On the 9th April Bishun Dutt was arrested at Aksauli, in the Mirzapur District, and was lodged in jail there, whence he was taken to Benares and then to Indore.

In consequence of the statement made by Manik Chand, Mr. Armstrong was anxious to secure a verification of those statements and for this purpose he took Manik Chand with him and asked him to take him to all the places where he and others had stayed while going to Nimez and while returning after the murder. It appears from the evidence of Mr. Armstrong that Manik Chand successfully pointed out to him the places mentioned by him in his statement. It also appears from his evidence that there was mutual

recognition between Manik Chand and the inmates of the various houses to which he had led Mr. Armstrong.

After the above verification Mr. Armstrong returned to Indore with Manik Chand. On arrival at Indore he at once confronted Manik Chand and Bishun Dutt. It must be remembered that Bishun Dutt was arrested on the 9th April and Mr. Armstrong returned to Indore on the 15th of that month. When Manik Chand and Bishun Dutt were confronted Mr. Armstrong found that there was mutual recognition between them. Manik Chand was asked to repeat his story and when Manik Chand had finished Mr. Armstrong asked Bishun Dutt what he had to say. On this Bishun Dutt made a statement which was recorded by Mr. Armstrong. On the 17th April Bishun Dutt was placed before Captain Colvin, the District Magistrate, where he made a confession. This confession is on the record as Ex 4. The usual certificate is attached to this confession. It appears that the statement made by Bishun Dutt was in Hindustani. Captain Colvin says he knows Hindustani and he can write Hindustani. He says the practice at Indore is that the Peshkar writes the statements in Hindustani and he himself at the same time writes the statements in the English language.

Manik Chand, however, was never placed before any Magistrate for a record of his statements before he was examined in the Commitment Court.

Under section 337, C.P.C., a pardon was granted to Manik Chand on the 24th April which was accepted by Manik Chand who was examined as an approver during the trial. The pardon is in these terms: "Whereas it appears to me on perusal of the papers in case No. 132 G. R. of 1913 under sections 302, 394, I. P. C., now being enquired into by me and triable exclusively by the Court of Sessions, that there is good reason to believe that Manik Chand, son of Teza Chand, of Murha, Police Station Murha, District Sholapur, an accused in the aforesaid case, has been directly or indirectly concerned in, or privy to, the offence under enquiry, and whereas I consider it expedient with a view of obtaining his evidence to tender

a pardon to the aforesaid Manik Chand, I hereby tender him a pardon on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence or to every other person concerned, whether as principal or abettor in the commission thereof." On this pardon being granted the approver made a lengthy statement before the Committing Magistrate and during the trial. The learned Sessions Judge in his Judgment at page 319 of the paper book has summarised the approver's statements. It is not, therefore, necessary to refer to it in greater details than is required for the purposes of the present case.

Approver's statements :—

At Sholapur he, Bal Chand Saha (P.W. 5), Deo Chand (P.W. 6) and Bal Chand Katari (P. W. 27) were in school together ; Moti Chand, the accused, was introduced to him by Deo Chand in 1908 or 1909. In 1911 all the above five men lived in the same house at Poona where they had gone to prosecute their studies.

Both at Sholapur and Poona these men dabbled in politics and used to read objectionable political publications. After a few months the idea came to them to join Arjun's Jain School at Jaipur. Moti Chand and Deo Chand were despatched to Arjun to ascertain from him if he would be willing to allow these young men to join his school at Jaipur. On learning that Arjun was willing to take them in hand, they wanted at once to proceed to Jaipur, but the parents of the student's did not give their consent. Notwithstanding the opposition by their parents, the approver Manik Chand and Deo Chand proceeded to Jaipur and on arrival there they telegraphed to the other three to come and join the institution. Moti Chand and Bal Chand followed 2 or 3 weeks later, but Bal Chand Katari was intercepted by his father at Bombay and was therefore unable to join his fellow students at Jaipur until 6 months later. At Jaipur these 5 boys were well received by Arjun. Bal Chand Katari began to get remittances of money from home while the other four were allowed to remain as free students, Arjun undertaking to look to their comforts.

There was another student who arrived some time after and was taken in the free list, and so was another student named Krishna Lal. Recent arrivals were Iswar Dhun and Partab Singh, the latter the son, and the former the son-in-law, of Kishori Singh. Kishori Singh is the brother of Zorawar Singh (one of the absconding accused). *As a whole the Jain institution at Jaipur was a religious and not a political institution*, but the Mahratta students were keen on politics and read prohibited publications. It was about this time that Bishun Dutt (the second accused) made his appearance at the institution by paying a visit to it and staying there for a few days. During his short sojourn at the institution he delivered an objectionable lecture to the students. He came again about a month later and stayed at the Boarding House for a fortnight. In his second visit his special subject of talk was politics and he gradually introduced the duty of attaining *swaraj*. He tried to impress upon his hearers that to attain *swaraj* it was necessary to commit dacoities in order to obtain funds wherewith to procure revolvers, pistols, etc., so that dacoity might be rendered more easy in future. *He used to be careful to turn out outsiders at the time he was instilling poison into the ears of such of the youths as appeared to him workable.* The five students affected by this talk were Moti Chand, Jai Chand, Manik Chand (the approver) and the 2 Bal Chands. Sheo Narain (P. W. 3) although a teacher of the Institution being a young man of 20 years was also impressed with Bishun Dutt's talk. Bishun Dutt paid a third visit to the Boarding House in February 1913. On one occasion in the course of conversation with Moti Chand he said "up to this, it has only been theory. It is now time to do some thing practical. Are you ready?" The students assented to his proposal well knowing that he meant that dacoities should be committed to bring about *swaraj* in the country.

Two or three days later Bishun Dutt, Manik Chand, Moti Chand and Jai Chand left the place saying they were going on pilgrimage.

On their arrival at the Jaipur Railway Station they were joined by another man named Zorawar Singh (an absconding accused).

Tickets were purchased for Agia and then for Moghal Sarai and finally for Benares. It is important here to mention that out of the 5 students it was only Bal Chand Katari who used to get remittance of money from home. The rest of the students were on the free list of the institution *and Arjun had made himself responsible for their comforts*. When these students left the institution ostensibly on a pilgrimage, the question is who met with the necessary expenses of the journey? They had no money of their own. Bishun Dutt was the man who had prepared them to commit dacoities. It must therefore be that Bishun Dutt supplied them with money. At Benares the 3 students stayed at the Jain Institute of Syadavay Mahavidyalaya, while Bishun Dutt and Zorawar Singh lived at the house of Bishun Dutt. A few days later Bishun Dutt advised the 3 students to leave the place where they were then putting up as any long stay there may arouse suspicion. Accordingly the 3 students and with Zorawar Singh went to stay at the Phari Dharan Mahamandal of which Premnand Sadhu (P. W. 14) was in charge. This was a Hindu Institution of which Kesari Singh, a brother of Zorawar, was one of the members. Bishun Dutt visited Mirzapur while the students were at Benares. Moti Chand and Zorawar 3 days after the removal of the students to Mahamandal were sent to reconnoitre the temple at Nimez, and it was resolved that the expedition to Nimez should set out after the return of the two men sent to reconnoitre the temple and its neighbourhood. Moti and Zorawar on their return reported that owing to an influx of visitors to the temple on account of a mela proceeding near Nimez, the time was inopportune for dacoity at the temple. Bishun Dutt therefore proposed to wait for a while and spend the interval at Mirzapur attending to a Sahukar who was ill of plague. So 2 or 3 days after the return of the spies all 5 went to Mirzapur, arriving there on the 10th March 1913. They first went to Badi Nath, the Secretary of the Gowsala (P. W. 34) and then to Unkar Mal Sahukar's house where they learnt that the Sahukar had died the previous night. On the 11th March the family of the Sahukar with the Munib Bindeseri Prasad (P. W. 29) had fled to Chunar and in the absence of the

family Bishun Dutt and the students with Ramcharan Ahir (P. W. 38) guarded the house of the deceased for several days.

It was from Mirzapur that Bishun Dutt despatched Jai Chand to secure entrance into the temple of the mohanth at Nimez to find out the ins and outs thereof, and it was arranged that the other young men should follow in a few days and meet Jai Chand at Sepahi Ghat with which Moti Chand and Zorawar had become acquainted on their previous visit. A few days later Bishun Dutt despatched Moti, Manik and Zorawar to Nimez to plunder the mohanth. These men arrived at Sepahi Ghat and Jai Chand joined them there. Moti, Manik and Zorawar went to the temple at 9 p.m. after securing information from Jai Chand and presented themselves to the mohanth Bhagwan Das, deceased. After paying their respects to the mohanth Moti presented a dozen religious pictures to the mohanth (Ex. XII) and they stayed there that night. These men could do nothing that night as besides the mohanth and his servant Bansropan there were also two Sadhus as guests at the temple and the mohanth slept in his bed room with locked doors. Next morning the 19th March the mohanth left for Buxar, where he had some business in connection with a case in the court there. He left with instructions that if he did not return that evening he was sure to be back next day, *i.e.*, the 20th March. It was on the night of the 20th that the double murder took place. On the evening of the 19th the men who had gone there with the object of plunder could not do anything as the mohanth was expected that evening also. In his absence these men beguiled the time by playing cards. A pack of cards was actually found during the search of the temple after the information of the murder was lodged at the police station. It appears that on the night of the 19th the only inmates at the temple were the cook (Jai Chand) and these strangers, *viz.*, Moti, Manik, Zorawar and Bansropan, the servant of the mohanth. It appears that Bansropan and a lad of 12 or 13 years also joined in the card playing. This lad is Chandradip Dube (P. W. 9) who is an inmate of a neighbouring Thakur Bari. The mohanth returned

from Buxar on the 20th which was the eve of the Holi festival. Bansropan asked the mohanth for leave of absence and though it was refused he took his departure. In the afternoon of the 20th the mohanth went to Chowbey Chuck, a neighbouring village near the house of Bansropan, if possible, to fetch him. The mohanth brought back with him not Bansropan but his younger brother Bansi Dhar (the deceased) as a substitute. After the evening meal Manik Chand got the mohanth to read to him some religious books while the others began to discuss how to proceed. During the interval that they stayed in the temple they had come to know that there was an iron safe in the bedroom of the mohanth. It was necessary therefore to manage the mohanth on the one hand and the lad Bansi Dhar on the other. While the mohanth was reciting some passages from a religious book, Manik, who was with the mohanth, was called by Moti and Zorawar. He went and he was asked to manage Bansi Dhar so that the lad may not shout out and spoil the game and they said they would settle the mohanth. Manik went out and entered the guest room which was east of where the mohanth slept and called the boy to that room and at once attacked him, laid him down and gagged his mouth to stop him shouting. While this was going on Manik heard the voice of the Mohanth as if something was happening with him. From the guest room the place where the mohanth was, was not visible, and so the approver Manik is not in a position to say as to what actually happened to the mohanth. But he says it was difficult for him to manage Bansi Dhar who was struggling when Zorawar, Moti and Jai Chand came to the guest room. The approver saw Zorawar Singh with a knife in his hand. On the appearance of these three men Manik told them to quiet the boy on which Zorawar Singh cut the boy's throat while Manik was holding the boy. When this was done, Moti called out "Don't cut and don't kill." The boy died. Then all four, *i.e.*, Manik, Moti, Jai Chand and Zorawar went to where the mohanth's body was. It was removed to a room and locked from outside. But before the men left the place they attempted to force open the iron-safe but without any success. The body of

the mohanth was removed into the room by these men and put upon a charpoi and a chadar was laid over him and then they left the place after locking the room, where the mohanth's body was, from outside. They could get nothing by way of plunder as they could not find the key of the iron safe. They did not attempt to break open the safe for fear of noise which might attract people from the neighbourhood. In going away they thought they must not go away empty handed and so they walked out of the temple premises with a timepiece and a butlohi, but before they did so they washed themselves at the well on the temple premises and changed their blood-smeared clothes for clean clothes which they had with them. They did not know what to do with the blood-stained clothes and so they got hold of a butlohi and tied the clothes to it and by means of a rope dropped them into the well cutting the rope. The rope was discovered freshly cut and lying near the well. Mr. Handson on his arrival sent a mullah into the well who brought out the blood-stained clothes from the bottom of the well tied to a butlohi. After this signal failure in the attempt to plunder the mohanth Zorawar and Moti and Manik left the temple by the front door while Jai Chand remained behind to bolt the doors from inside and later joined his confederates.

It must be remembered that Manik Chand did not see how the mohanth was murdered and by whom, but he says that when he was locking with Banshi Dhar, he heard the voice of the mohanth. He further says that his companions told him afterwards that the mohanth had raised his hands and was about to cry out to attract the attention of people in the neighbourhood when his associates, in order to prevent people in the neighbourhood coming to know what was happening in the temple, knocked him down and killed him with the knife that was afterwards used to cut the throat of Banshi Dhar. Manik Chand says he learnt the details how the mohanth was murdered from his associates. In the talk they had on the return journey Moti said it would have been possible to save themselves without murdering the mohanth. On their return journey

they booked at Raghunathpur, the nearest Railway Station from Nimez to Benares, where they went and put up with Debi Dayal (P. W. 20) a Bajpai, where they stayed for 3 or 4 hours. Debi Dayal corroborates this. Thence Moti, Jai Chand and Manik went to Mirzapur and related the whole story to Bishun Dutt, who on learning the whole story said, " You have been fools; you have taken the lives of 2 men needlessly. " From Mirzapur Moti, Manik and Jai Chand proceeded to Jaipur to the Boarding House kept by Arjun. There at Jaipur in the Boarding House these students told Arjun in the presence of Bal Chand Saha, Bal Chand Katari, Deo Chand, Seo Narain, Iswar Dhar and Pratab Singh the whole history of their absence from start to finish. It is said by the approver that he himself was the principal speaker, but his two companions, namely, Moti and Jai Chand, related portions of the story in which they and not the approver had been personally engaged, *e.g.*, the first journey of Moti and Zorawar to Nimez and the experience of Jai Chand as cook of the mohanth. The above is the summary of the approver's statements made to investigating officers and during the trial.

It must not be lost sight of that the first clue to the Nimez murder was found in the statements made by Seo Narain after his arrest at Bombay to the Bombay Police Officers and to Karlekur, the Indore Police Sub-Inspector. How the accused were traced rests on the statements made by Seo Narain at Bombay. It was on this statement that Moti, Manik and Bishun Dutt were arrested and after the arrest having been confronted with Seo Narain, Manik made a statement and subsequently Bishun Dutt had his confession recorded by Captain Colvin, District Magistrate of Indore. Then followed the detailed statements of Manik by instalments which on enquiry was found to have been corroborated by independent testimony of witnesses from Benares and Mirzapur. It appears that Manik was at first reluctant to make any statement that might implicate Bishun Dutt, but when he was confronted with Seo Narain and was told that a man having that name had been arrested he gave out the whole story of the conspiracy from start to finish.

The foundation of the present case really rests in the consideration whether Seo Narain is a truthful witness and whether the evidence given by the approver Manik Chand can be believed and whether his evidence has been corroborated not only as to antecedent and subsequent events that occurred before and after the murder, but also whether his evidence has been materially corroborated as to the identity of Moti and Bishun and as to the part played by them in this tragic drama.

So far as we can make out from the evidence on the record there is nothing to show that Karlekur and the Bombay Police had any knowledge of the affairs at Nimez that took place on the 20th March 1913. *They were engaged to find out the antecedents of Arjun and not the perpetrators of the murder at Nimez which had taken place nearly a year before the enquiry into the life of Arjun commenced under a requisition from the Delhi Criminal Investigation Department.* There is no doubt that, although after a police enquiry the Nimez murder case was cast into oblivion as an undetected crime, there was the publication of the description of features of the suspects of these murders not only in the local Gazettes but also copied in other Gazettes. But we do not think that either Karlekur of the Indore Police or the Bombay Police had any such interest in the murders committed at Nimez a year before as to be anxious to impute that crime to people who were quite innocent of those murders. It cannot be reasonably argued that either Karlekur or the Bombay Police tutored Seo Narain to make the statement he made implicating himself, Moti, Jai Chand, Zorawar and Bishun Dutt. The foundation of the present case in the statement made by Seo Narain at Bombay to Karlekur and the Bombay Police and subsequently to other Police Officers of very superior rank.

Next comes the statement made by the approver Manik Chand and not only to the Police Officers of very high grade, but also in the Commitment Court and during the trial in the Court of Sessions. It seems to us strange why of all the men in the world Seo Narain and the approver should have selected Moti, Zorawar

and Bishun Dutt as the participants in the crime that was committed at Nimez on the night of the 20th March 1913. Deo Chand (P. W. 6) was no doubt asked in cross-examination whether there was a quarrel between Manik and Moti before the occurrence. He said there was such a quarrel, but the witness appears to us to be trying to help the defence as far as possible. It is indeed strange that if there was such quarrel Manik was never asked a single question about it. If it had been true that there was such quarrel it stands to reason that some such questions would have been put to Manik Chand. Manik Chand was cross-examined on the 8th, 10th, 11th and 13th July, but not a single question was put to him as to any quarrel between him and Moti Chand. Deo Chand (P. W. 6) was no doubt asked in cross-examination on the 21st July 1914, if there was any quarrel between Moti and Manik. He said, yes, but the principal party to this quarrel, namely Manik Chand, was not at all questioned about it. The learned Sessions Judge had on that very ground remarked that this witness could not be believed and the defence had moved this court for a transfer on the ground that the Sessions Judge by making that remark had prejudiced the case. This Court refused to order the transfer applied for. It is obvious from the statement of this witness (P. W. 6) that he was trying to help the defence as far as possible by making his statements in the trying Court not quite inconsistent with the evidence he gave in the Commitment Court. For the above reason, we do not believe that there was any ill-feeling between Manik and Moti before he (Manik) made a statement to the police at Bombay which he repeated in the trial. There is however evidence to show that if there was any friction between Manik and Moti it was made up afterwards (see Bal Chand Soha, P. W. 5) In the circumstances we are not prepared to believe that Manik, in making the statement that he made to the police, was actuated by any malice in consequence of any quarrel between him and Moti Chand.

We have already observed that 71 witnesses were examined for the Crown and none for the defence. The prosecution case

however, hinges on the evidence of the approver Manik Chand. On his evidence alone it is unsafe to hold either of the accused guilty of the charges laid against them. A long practice has established the principle that the evidence of an accomplice should be corroborated on material particulars by independent testimony not only with reference to the offence itself, but also with reference to such particulars as go to establish the identity of the accused in the participation of the crime. If, therefore, there is no such corroboration in this particular case the prosecution must fail. On behalf of the accused it has been alleged that there is no such corroboration and that both the accused should have been acquitted on that ground alone. It is therefore necessary to sift the evidence and see if there is such corroboration. The evidence may be classified into two heads, *viz.*, (1) the evidence with regard to the enquiry that was held immediately after the occurrence, (2) evidence as to what took place and how the identity of the criminals was discovered a year after the occurrence on a clue given by Seo Narain on his arrest at Bombay.

The former enquiry related to matters just preceding the occurrence and some after it. This is deposed to by Bansropan, Chandiadip, Shakal Kahar, Sahawan Ahir, Padman Ojha and Gokhul Ojha. Bansropan was the permanent servant of the mohanth and Chandiadip, aged 12 or 13 years, is a permanent resident of a Math very close to the temple of the mohanth. This boy was a constant visitor at the temple before the occurrence. During the first enquiry neither Bansropan nor Chandiadip was in a position to give more details than the descriptions of the features of the four strangers. Padman Ojha (P. W. 12) proves that he had gone to the mohanth on the 20th March in a *ghari* after nightfall, and there he saw the cook who was engaged some days before by the mohanth and two men sitting by the side of the mohanth. During the trial he says he can't identify them. Gokhul Ojha (P. W. 13) proves that a new cook was engaged by the mohanth and that a day previous to the date of the murder he had seen two strangers and the new cook at the temple and that the mohanth was then there. During the trial he says he would

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not be able to identify any of those men. In the first enquiry other witnesses were also examined by the police but only to prove the murder and further to prove the search in the temple house and into the well and to obtain material for the descriptive roll and to attempt, unsuccessfully, to obtain from Bansropan an identification of the criminal on five different occasions.

The second enquiry relates to the discovery of the clue to the identity of the accused in the Nimez affair. From the statement of Seo Narain who was arrested not in connection with the present enquiry, but with reference to the Delhi Conspiracy enquiry, the arrest of Manik, Moti and Bishun Dutt, their identification by the Nimez witness, the examination of witnesses who were residents of the Jaipur Institution and of witnesses from Benares and Mirzapur, it appears that Manik had made his statements by instalments to the police at Bombay and Indore. He made a full and detailed statement implicating himself, Moti and Bishun Dutt after he was confronted with Seo Narain.

The police, it appears, wanted to be certain as to the truth of the long story given by Manik and for this purpose had to satisfy themselves with corroboration from witnesses of the various places mentioned by him in his statements. All these witnesses have been examined in the trial, *i.e.*, witnesses from Benares and Mirzapur where Bishun Dutt and his associates including the approver Manik had put up and students of the Jaipur Institution who corroborated Manik by proving that Bishun Dutt had come to the Institution on various occasions and had preached to the boys, and that Bishun Dutt and three students, *viz*, Jai Chand, Manik Chand and Moti Chand went away from the Institution on the plea of going to pilgrimage and that on the return of the students they had admitted that they had really gone to plunder a Sadhu near Moghal Sarai and that they were not successful in plundering him and further that they had murdered him.

The above are the facts which happened a little before the murder, on the night of the murder, and some time after the murder,

and lastly the clue discovered in the statements made by Seo Narain in connection with another enquiry that had nothing to do with the present case and which gave rise to the second enquiry into the Nimez murder case.

On behalf of the accused the following points have been urged :—

(1) The evidence of the approver is not fit to be acted upon, firstly, because (a) he was never placed before a Magistrate to have his confession recorded, (b) that he was always in police custody, (c) that he has not been corroborated on material particulars, and (d) that the pardon granted to him was not in accordance with the provisions of section 337, C. P. C., as no reason appears to have been given in the proceeding which is essentially required by that section.

(2) That the statements made by Bishun Dutt before Captain Colvin, the Indore Magistrate, was no confession, as it does not bear the usual certificate and that as Captain Colvin was a Magistrate of a Foreign State he was not competent to record this confession.

(3) The statements by witnesses to the police at various stages of the enquiry should not have been used for corroboration purpose.

(4) That Chandradip ought not to be treated as a truthful witness, inasmuch as during the first enquiry he was not examined, and was only examined in order to remove a defect found in the first information. In the first information Bansropan's name is not mentioned and the deceased boy Bansi Dhar is mentioned there as the servant of the mohanth and not as a substitute of Bansropan.

(5) That the conviction of Moti under section 302/114 for the murder of Bansi Dhar cannot stand, as there is nothing on the record to show that if he had been absent he would have been liable as an abettor.

(6) The identification of the accused outside the Court, in what is called identification parade, is not warranted by law.

(7) That Mr. Morony could have been examined before the Committing Magistrate as the enquiry preliminary to commitment commenced before he sailed for home.

1. The approver's evidence.

(a) It has been contended that when Bishun Dutt and Manik Chand were in the police custody, there was no reason why Bishun Dutt should have been produced before Captain Colvin at Indore to have his confession recorded, while Manik Chand was not so produced. It was necessary to have his confession recorded and their application should have been made to a competent Magistrate to tender pardon to him. We are not aware of any law which makes the recording of the confession of an accused a condition precedent to the grant of a pardon under section 337, C. P. C. It is to be remembered that the police had in their possession a record of the statements of both the accused. Bishun Dutt's statements did not cover the whole affair while that of the approver did. The latter was, it seems therefore, selected to be called as a witness.

(b) Manik Chand was no doubt in police custody after his arrest. This in itself is no ground to throw out his evidence as of no value only on that account. He has been fully examined and cross-examined at great length. He nowhere suggests that he was ill treated or induced to make the statements that he did during the trial.

(c) His evidence has been fully corroborated as to the presence of Moti Chand at the temple at Nimez up to the evening of the 26th March by Chandradip and up to return of the mohanth from Buxar on the same day on the 20th by Bansropan. Padman Ojha (P. W. 12) and Gokul Ojha (P. W. 13) both corroborate him in saying that in the temple there were 2 or 3 strangers with the mohanth and there was also a new cook (stranger) engaged by the mohanth some days before he was murdered. These two witnesses say that owing to the lapse of time, however, they cannot identify these strangers. Could not the police have tutored these two

witnesses to say that they could identify Manik and Moti ? These men are ordinary cultivators of the village Nimez. It is indeed surprising that when the police in high and subordinate rank have been blamed of doing things which the law does not warrant, these two cultivators were allowed to say that there were strangers in the temple, but they cannot identify any of them. Manik's evidence has also been corroborated by students who were fellow students of Moti in the school kept by Aijun. These witnesses and witnesses of Mirzapur and Benares corroborate the approver fully with regard to the association of Bishun Dutt with Moti, Jai, Zorawar and Manik. A number of witnesses from Benares and Mirzapur have been examined. They appear to be independent witnesses having no interest in the case or in any way biassed against any of the accused. On the contrary, from their evidence, it appears that if they had any interest it was in favour of the accused Bishun Dutt. Mr. Armstrong, against whom no insinuation of falsehood was attributed by the defence in the Sessions Court and whose independence we think it is impossible to doubt, has been examined, and from his evidence it is clear that in many cases during the verification proceedings there was a mutual recognition between Manik Chand and some of these witnesses. Much stress has been laid against the veracity of the approver inasmuch as he was in the hands of the police for rather a long period. Manik was arrested on the 24th March 1914 at Poona by Dhandhu Nigarkhar (P. W. 23) and handed over to Nur Beg, Head Constable (P. W. 21) who handed him over to Sukha Ram, Head Constable (P. W. 22) on the 25th March 1914. This witness started for Indore with this accused. They arrived at Indore on the 27th and went to the bungalow of Mr. Morony, Inspector-General of Police, Indore State, at 8 a.m. that morning. Mr. Morony put him in charge of Abdul Nabi (P. W. 24). At noon of that date he was taken to Mr. Morony and some police officers told him to disclose everything. He made no statement on the 25th. He was again brought to Mr. Morony when he made a statement. It stands to reason that Mr. Morony must have been

informed that Seo Narain had been arrested and that he had made a statement. Seo Narain arrived at Indore on the 29th March. Manik was then confronted with Seo Narain and was told to disclose everything as his own man. Seo Narain had given him away by statements that he (Manik) had admitted what was done at Nimez on the night of the 20th March 1913 and the part taken by him and his confederates.

On the 3rd April 1914 Seo Narain and Manik were again confronted when Seo Narain advised Manik to confess the whole affair. Seo Narain has made the following statements with regard to this part of the case: "Mr. Armstrong asked me to exhort Manik Chand to disclose the whole story. He had told me several times before I was confronted with Manik Chand. I can't remember if I was willing to do so from the outset. The first thing I said to Manik Chand was 'Disclose what you told me of the murder of the mophanth.' Mr. Morony brought out an Act and said that Manik Chand might benefit by disclosing the facts. No, he did not say anything like that, if he did not disclose it he would take much harm. Mr. Armstrong told him that if he disclosed the facts he might benefit thereby. Manik Chand did not consult me as to whether he should or should not disclose the facts. It was after 3 or 4 hours of the interview that Manik Chand made a disclosure in my presence."

We know that Mr. Morony has not been examined in the case as he had gone home when the trial took place. Mr. Armstrong does not say that Mr. Morony brought out an Act and said that Manik would be benefited by making a disclosure. Mr. Armstrong says that confrontation took place between Manik and Seo Narain, as from experience he knew that when one denies a true statement made by another, he will, when confronted with that other who has given the show away, break down in his denial and tell the truth. We are of opinion that it is a commonsense method of finding out the truth. Mr. Armstrong gives an emphatic denial to insinuations made in his cross-

examination. He says, "It is absolutely incorrect that any inducement was offered to Manik Chand to confess. It was certainly not mentioned by me not to my knowledge by anybody else to Manik's father that if Manik confessed his (the father's) debts would be paid off."

Manik in his evidence does not say that he was either ill treated or in any way induced to give evidence implicating the two accused to save himself. There can be no doubt that in weighing the evidence of an approver, we have to take into consideration that the approver in a murder case must naturally be anxious to save himself at the expense of others, but at the same time we have also to consider why the approver of all men in the world should name particular accused as his participal in the crime against whom he had no grudge, and also as to whether his statements have been corroborated as required by law. We find that he has so been corroborated by independent and unbiassed evidence. It has been contended that he was not placed before any Magistrate as Bishun Dutt was for a record of his confession. We do not see what the police gained by keeping him till he was examined in the Commitment Court. If he was entirely and absolutely in the control of the investigating police officers, we think, in order to bind him to his statements, he should have at once been brought to Captain Colvin for a record of his confession. This was not done apparently because the police had made up their mind to apply to the Magistrate to tender pardon to Manik under section 337, inasmuch as there was no independent evidence as to the occurrence except that of Manik. It is said that Manik was not placed before a Magistrate to have his confession recorded because the police officers concerned in the enquiry were not sure if he would repeat the statements that he had made to them in the trial. If this was so, what made him give the evidence implicating himself and the two accused and others. It appears to us that as the statements of Manik covered the whole case and proved the parts played by all the accused, he was considered a

fit party to be examined as a witness after a tender of pardon. We do not think there is anything wrong in this procedure. It must be remembered that Bishun Dutt never came to Nimez with the students, and his evidence therefore could not help the prosecution in investigating the incidents at Nimez on the night of the 20th March 1913.

(d) Now as to the proceeding under section 337, C. P. C., the tender of pardon was granted by a 1st Class Magistrate in the following terms on the 24th April 1914:—

“Whereas it appears to me on a perusal of the papers in case No. 132 G. R. of 1913 under section 302 394, Indian Penal Code, now being enquired into by me, and triable exclusively by the Court of Sessions, that there is good reason to believe that Manik Chand, son of Teza Chand, of Marha, Police Station Marha, District Sholapur, an accused in the aforesaid case has been directly or indirectly concerned in or privy to the offence under enquiry; and whereas I consider it expedient with the view of obtaining his evidence to tender pardon to the aforesaid Manik Chand, I hereby tender him a pardon on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence or to every other person concerned whether as principal or abettor in the commission thereof.” It has been contended that this is not enough as clause 4 of section 337, C. P. C., provides that every Magistrate, other than a Presidency Magistrate, who tendered a pardon under this section shall record the reason for so doing, and the Magistrate who has tendered pardon in the case has not done so, and hence the evidence given by the approver is of no use to the prosecution nor can it be used against the accused. We are, however, of opinion that on a careful perusal of the proceeding as quoted above, the reasons have been given. But in the case of *D. L. R. vs. Bansi Singh and others* (5 C. L. T., 224) it was held “that section 337 of the Code required a Magistrate who tenders a pardon to record his reasons for so doing. Where, however, the facts which led up to the tender

appear on the record the omission to state reasons is not only not an illegality but not even an irregularity which vitiates the proceedings." The above authority appears to have been followed in the case of *Emperor vs. Annada Charan Thakur* (36 I. L. R., Calc., 629). In the present case the facts necessary to explain why pardon was tendered are present in the record, and these facts led up to the tender and have been in accordance with the principle laid down in the above two cases. We hold, that if there was no mention of the reasons, its non-mention does not vitiate the proceeding. But, as already observed, the reasons are given in the order.

(2) As to Bishun Dutt's confession, the question is, "Was Captain Colvin competent to record his confession as a Magistrate?" Captain Colvin is Magistrate of Indore Residency Bazar. It is a territory where, according to the evidence, the Indian Penal Code and the Criminal Procedure Code are in force. As to his competency to record a confession of an accused who is being tried in British India, see the cases of *Queen-Empress vs. Nagla Kala* (22 I. L. R., Bom., 235) and *Queen-Empress vs. Sundar Singh* (12 I. L. R., All., 595). Captain Colvin has been examined and he proves the confession of Bishun Dutt. If he was not competent to record it, it can be treated as an extra judicial confession made before a private individual. There are two renderings of Bishun Dutt's confession on the record. We find that only one bears the usual certificate. In order to find out why this is so, we have to refer to Captain Colvin's evidence. He says: "I first asked him (Bishun Dutt) *Apne razamandi se kuch bean karna chahte ho?*" He replied, "yes". To make quite certain I repeated the question to him and he again answered in the affirmative. Bishun Dutt then made a statement to me. I had hardly to question at all excepting just towards the end. I merely asked him what he had to say and he proceeded to tell me what he had to say. All questions asked by me were recorded except that I occasionally interjected what was the date and did not record those words. I had no idea whatever of the case regarding which he would speak. I

knew vaguely that it was a murder case, but nothing whatever of the details. The statement was made in what one might call "Urdu" in the vernacular, *i.e.*, I don't wish to say it was either Hindi or Urdu, it was the ordinary colloquial Hindustani. The language was perfectly familiar. As he spoke in vernacular I took it straight down in English and my Sheristadar took it simultaneously in the vernacular. That is the usual procedure of my Court (in Indore). That is the mother-tongue of my Sheristadar. The usual certificate is at the bottom of the English record. 'There is no such certificate attached to the Hindustani record of the confession.' A number of questions based on facts of various reported cases were put in cross-examination. These questions were with regard to warning the accused, enquiry from him as to how long he was in police custody, and how his consent to make the confession was obtained. In re-examination Captain Colvin said : "I satisfied myself that the confession was voluntary first by his answer twice made that it was voluntary and second by his general appearance. He was so absolutely calm and collected that it really never occurred to me to ask how he had been treated. There was no hesitation in his statement; he was absolutely deliberate and calm and he made no complaint to me against any one." It is quite clear from the above statements of Captain Colvin that he had satisfied himself that the deponent was making the statement in a quite collected manner and deliberately and voluntarily. The discretion of a Magistrate recording a confession is not to be fettered by any positive and defined methods in this particular. It is enough that the Magistrate was satisfied from the demeanour and answers of the deponent that he was making a voluntary statement—see the case of *In re an Attorney* (41 I. L. R., Calc., 446).

3. The next point urged is, "Can the statements made by witnesses during the course of a police investigation be used to corroborate their statements during the trial of his?" The authorities on the subject are conflicting. But this Court held in the case of *Fanindra Nath Banerji vs. Emperor* (36 I. L. R., Calc., 281)

that oral evidence of the statements may be given to corroborate a prosecution witness.

In a special Bench case, *King Emperor vs. Nilkhanta and 13 others* (35 I. L. R., Mad., 247), all the Judges constituting that Bench unanimously held that the law as interpreted in 36 Cal. was correct. The Allahabad and Bombay High Courts have held otherwise, but we prefer to follow the interpretation as laid down by this Court and followed by a Special Bench of the Madras High Court. This is the plain meaning of the section and section 157, Evidence Act, is not controlled by section 162, C. P. C. For the above reasons we held that the corroboration of prosecution witnesses during the trial by oral evidence of their statements before the police investigating officers is consistent with the provisions of section 162, C. P. C.

It was contended that Chandradip (P. W. 9) should not be believed.

He is a lad of 12 or 13 years of age. He was not examined in the first enquiry. He was examined for the first time in the second enquiry. He has identified Manik, the approver, and Moti Chand as two of the strangers he had seen at the temple on the evening of the murder.

The murder took place on the night of the 20th March. Police arrived on the spot on the 21st after the first information was laid. Bansropan was examined and gave out that four strangers had been at the temple on the 19th. He also gave their descriptions; no one could tell who they were and of what place. In the confession that must have taken place, it is probable that no one took any notice of a boy of 12 or 13 years of age. Chandradip says that before the night of the murder he had often played cards with the strangers and that on the evening of the murder he had strolled to the temple to pay his respects to the mohanth; he had then seen the strangers. Let us see who were the witnesses who

could corroborate him by saying that he had gone to the temple in the evening of the murder. Bansropan had gone home and he was not at the temple. The mohanth and Bansi Dhar are dead. Moti is an accused in the case, the two other strangers have not been found. Let us see what Manik says about Chandradip. He says that during his and others' sojourn at the temple a boy named Chandradip used to come and join in playing cards with them. Let us see how his name came to the knowledge of the police. It has been described in the Lower Court judgment. It appears that Mr. Sanyal, when he was at Indore, had not with him the diary of the enquiry held in March 1913. He therefore asked Bansropan who could recognize the four strangers and telegraphed the names (Ex. 52) which Bansropan gave. We find the names of Chandradip amongst others in the message.

4. The arguments as regards Chandradip is that he has been examined as a witness as to the happenings of the 20th March 1913 and several days before that for an object. It is contended Bansropan is not at all mentioned in the first information, and instead mention is made in that document of Bansropan who is described therein as a servant of the mohanth employed since 2 or 3 months. It is urged Bansropan has been put up as the permanent servant. It is said that it was feared that he may not be believed, and hence to support his evidence it was found necessary to introduce another witness and hence the boy Chandradip who was never examined before was put up as a witness. But we find that Bansropan was examined by the first police officer who arrested him at the temple on the 21st March 1913 and then and there Bansropan gave a detailed story of what he knew. From Bansropan's evidence it appears that he mentioned the name of Chandradip (or Dipan Dube) used to come to the temple and play cards. He says that he had mentioned the fact to the Daroga or the police. Abdul Latif (P. W. 49) does not say so. He says no one at the time mentioned to him the name of Chandradip. This name was mentioned by him to Mr. Sanyal at Indore. Mr. Sanyal could not have instructed him to mention this name. But he says he recorded a summary note

of what the witness said. These are admitted by certain mis-statements in the first information, as, for example, Shakal Kahar (P. W. 10) who is an uncle of Bansropan and the deceased Bansi Dhar. He is described as a brother of Bansi Dhar. Bansropan's name is nowhere mentioned in the first information and although Bansi Dhar was employed as a servant only on the afternoon of the 20th March as a substitute for his brother Bansropan, he is described as the servant of the mohanth employed by him since about 3 months before the occurrence. Let us see what the first informant (P. W. 17) has said in the first information and his deposition and see whether they are reconcilable. In the first information he says: "It was, however, ascertained from Shakal Kahar, the brother of the victim, that he went to the kothia (temple) from Barahpore and finding the kothia closed he scaled the boundary wall and went inside and seeing the dead body of his brother raised an alarm." In his deposition he says, "we asked Bansropan if he was the first to come to the kothia, and he told us that Shakal Kahar had come first and had told him that on finding the doors closed and he got over the wall and that Shakal had then informed Bansropan." It seems to us that there is an inaccuracy in the record of the first information. It is not denied that Shakal Kahar is the uncle of Bansropan and Bansi Dhar. Shakal is an uncle of these boys, a brother of the deceased, is also mentioned. The mistake has been in not naming the brother and in describing Shakal as the brother. The first information should have been "It was however ascertained from Shakal Kahar and the brother of the victim, etc." By adding the word "and" after Shakal, the meaning is very clear. We should also bear in mind the confession that must have been mentioned by the first informant and he must himself have been confused. We have it from the evidence of the first police officer who arrived on the spot that Bansropan was there and that his statements were at once recorded. For the above reason we do not think that Chandradip has been brought as a witness because Bansropan's name was not mentioned in the first information. It is hardly likely that the police should select

a boy of 13 years of age and examine him in order to cure a defect in the first information. Chaudradip was certainly not examined in the first enquiry. Reading the whole deposition of the boy we do not think that he is a tutored witness. He had deposed very intelligently. He says he did not go up to the police on the 21st March 1913, and till then that he had seen the strangers in the previous evening and that he had on some occasions played cards with them. Is it likely that a boy of this age would volunteer any statement in a serious case of a double murder? He would rather try to escape from giving evidence.

5. It was urged that section 302/114 has no application against Moti, as there is nothing on the record to show that if he had been absent he would have been liable for abetment. Sections 114 and 34 are only explanations. The material offence is murder under section 302, P. C. We are of opinion that it is doubtful if Moti Chand can be held responsible for the murder of Banshi Dhar. From the evidence it appears that at the time when Moti, Jai Chand and Zorawar came to the guest room where the approver was struggling with the boy Banshi Dhar, it was Zorawar who came up and began to cut the throat of the boy. It was at this time that Moti called don't cut the boy. Moti has been convicted of this murder also. We however acquit him of this murder. It is therefore not necessary to discuss whether he is liable for the murder of Banshi Dhar under section 302/114, I.P.C.

6. Identification of the accused outside the Court is said to be not warranted by law. We do not find there is any law that forbids it. It must be remembered that the second enquiry commenced a year after the murder and we think that it was necessary to ascertain fully by all the means possible if the witnesses are in a position to identify any of the accused before they are placed in Court. This identification was a part of the police enquiry. We also find from the evidence that all possible precautions were taken in order to secure a true identification of the accused. It was done in the presence of officers whose integrity and honesty cannot be questioned.

7. It is true that Mr. Morony has not been examined. He is an Inspector-General of Police of a Native Independent State. It appears that he went Home a few days after the commitment proceedings commenced before the Magistrate. He was certainly not in the country when the trial commenced. Even if he had been examined his evidence would have been put in under section 33 of the Evidence Act. In British India it is not easy to find out when an employee of a Foreign State was likely to leave this country. He has not been examined as it was not known that he was going Home. But what harm has been done? Mr. Armstrong and Mr. Sanyal have been examined: there is no reason whatsoever to require that they should have been corroborated by Mr. Morony. From the evidence of the approver Manik Chand as corroborated by students of the Institution kept by Arjun and by the evidence of witnesses from Mirzapore and Benares, it is clear that Bishun Dutt was the prime mover of the whole affair. The object was to plunder the mohanth who was known to have a lot of money in his iron safe. It appears that the mohanth was anxious to secure boys as his disciples and for this purpose he had asked the help of one Jumna Dass who had supplied him with a disciple but was not paid anything for the trouble. It was he who first proposed to Bishun Dutt (see Bishun Dutt's confession) to despoil of the mohanth. Bishun Dutt was not agreeable at first but he was prevailed upon by Zorawar Singh (absconder) to plunder the mohanth. The whole plan was developed by Bishun Dutt, but it appears that he never suggested murder. The idea was to get hold of the cash in possession of the mohanth. It seems that none of the conspirators at the time thought that murder would be necessary in order to attain their object. Bishun Dutt took Moti, Manik, and Jai to Benares and Mirzapore and obtained Zorawar to accompany them on the expedition. These men arrived at the temple and stayed there as guests and a few days after, *i.e.*, on the night of the 20th March 1913, the two murders were committed. From the evidence it is clear that on the night of the 20th there were present at the temple (1) the mohanth, (2) Bansi Dhar, (3) Manik Chand, (4) Jai

Chand, (5) Moti Chand, (6) Zoiawar Singh. That two murders were committed that night no one can deny. These men disappeared ; at least these men were not found in the temple when the two murders were discovered. No clue could be found of these strangers for about a year when all of a sudden in the course of an enquiry which had nothing to do with these murders, a statement was made by Seo Narain (P. W. 3) which give the first clue to the identity of the perpetrators of the double murders at Nimej. A fresh enquiry was ordered resulting in the present case. There is no doubt that there is no direct eye-witness of the murder of the mohanth. In accordance with the statement of the approver three men, *viz* , Moti, Jai and Zoiawar went for the mohanth and they asked the approver to settle with the boy Bansi Dhar. What happened where the mohanth was, the approver is not able to say, as from the guest room where he was struggling with the boy Bansi Dhar to the place where the mohanth was, was not visible. From the medical examination of the body of the mohanth, it is clear that a number of wounds were inflicted. This must have been inflicted not by one man but more than one. Three men had gone to silence the mohanth, one of them was no doubt Moti. If Moti was there and the mohanth showed resistance and he was murdered by all three or even by one or two of them, Moti would certainly be liable for that murder as it was committed in prosecution of the common intention of all, namely, to wrest from the mohanth the key of the safe in which the cash used to be kept. In the above circumstances we cannot but hold that Moti is liable for the murder of the mohanth and Bishun Dutt for the offence of section 294, I. P. C , as the whole affair was planned by him. He did not at that time know that murder would be necessary in order successfully to carry out the plan of robbery. He no doubt abetted the offence of robbery. He brought the boys to Mirzapore and Benares. He sent a man first in order to find out the opportunities. He sent the boys to Nimej. The evidence of Benares and Mirzapore witnesses clearly prove his association with the boys and his own confession is no doubt an admission of the part he took in the affair. We are of opinion that

he has been rightly convicted of the offence under section 394 and Moti under sections 302 and 34 of the Indian Penal Code for the murder of the mohanth.

After having given full consideration to the evidence on the record and arguments adduced on both sides, we are convinced that Bishun Dutt was the master mind to engineer the whole plot, giving all possible help to the students in sending them out on the expedition to Nimez after taking all necessary precautions to keep himself behind the scene. We are therefore of opinion that he has been rightly convicted of abetting an offence under section 394, I. P. C., and considering the enormity of the offence we think the sentence of 10 years' transportation is a most proper sentence.

As to Moti Chand we are convinced that he was one of the guests of the mohanth on the night of the 20th March 1913; that he along with Zorawar and Jai Chand went to that part of the house where the mohanth was to settle him and secure the key of the iron safe in order to plunder the money kept therein, while under their instructions Manik, the approver, went to the guest room to silence the boy Bansi Dhar; that these men suddenly disappeared from the temple; that Moti and the other boys were tools in the hands of Bishun Dutt, and that their identities were discovered in the course of an enquiry in connection with quite another matter, and that the evidence of the approver has been fully corroborated by independent testimony on material particulars. There is no doubt that there is no direct evidence that Moti took any part in the murder of the mohanth, but there is on the record other evidence which leaves no doubt in our minds that he was present when the mohanth was murdered and that the murder took place to facilitate the robbery which was the object that had taken Moti and his associates to Nimej.

In the above circumstances, we confirm the sentence of death passed on Moti Chand, and dismiss his and Bishun Dutt's appeal.

We desire to say that all credit is due to the police officers who conducted the enquiry. We find that in this enquiry every effort was made to prevent innocent people being run in and bring to justice people who on the evidence appeared to have been the culprits.

COXE, J.—

I agree entirely with the decision of my learned brother and generally with his view of the evidence, except that I have some doubt whether police officers can, after refreshing their memories from the papers, give oral evidence to corroborate the statements of witnesses in Court. It is quite unnecessary, however, in this case to decide that question, as we have the statements in Court, and the former statements do not carry the case any further, or add any thing to their weight. The only previous statement that is of any importance is that of Seo Narain, and that is of importance, not because it corroborates Seo Narain's subsequent statement, but on account of the time at which it was made. The distinction between proof of the truth of a statement and proof that a statement was made, irrespective of its truth, has often been pointed out. Admitting for the sake of argument that Seo Narain's previous statement cannot be used to prove that his subsequent statement is true, and even admitting that it was wholly false, yet the fact that this supposedly false statement, implicating Moti and Manik, was made at a time when the police knew nothing of the Nimez murder, is of high evidentiary value, as showing that the accusation of these men, however false it may be, was not fabricated by the police.

My learned colleague has dealt so fully with the case that I need add but little. The case has reached its enormous dimensions because the prosecution have felt themselves compelled, not only to prove the guilt of the accused, but to anticipate the usual defence by proving that all the protracted enquiries that had to be made were honestly conducted. On behalf of the defence it is contended that the whole case, as against the present accused, has been

concocted by the police. This is a contention on which I do not think it necessary to waste many words. In the first place the investigation was not conducted by subordinates but by gentlemen of rank and position whose integrity, if they did not happen to belong to the Police Department, no one would dream of questioning. In the second place a large proportion, if not the majority of the witnesses who are said to have been tutored, are not only quite independent of the police, but are favourably disposed to the accused, and reluctant to give evidence against them. In the third place the main points of the story, and especially the complicity of the accused, emerged before the police concerned knew anything about the matter.

As regards the criticisms in detail of the police procedure some are unsupported by evidence. For instance, it is said that Manik Chaud was kept in custody without due warrant. No evidence has been given of this, and I unhesitatingly reject the contention that the prosecution has to discharge the burden of proving the regularity of proceedings outside the Court. Unless it can be shown that such proceedings have effected the evidence given in the Court, those proceedings are irrelevant. Other criticisms are based on what I regard as the utter fallacy of supposing that a police officer in the course of an investigation is not entitled to do anything which is not expressly authorised by some specific provision of law. Reference has been made to the observations in the Emperor *versus* Radha Halwai (7 C.W.N., 220). As these observations are frequently quoted in the mufasil, and even apparently in this Court, it may be as well to point out that they have no judicial authority. They were not the decision of the Bench nor did they affect that decision. After the case had been decided one of the learned Judges desired to place his views on a certain administrative matter on record for communication to Government. With these views I do not happen to agree, but whether they are right or wrong, they do not in any sense constitute a judicial decision binding either on us or on the subordinate Courts.

It should be borne in mind that it is not the business of the police to try the accused, but to find out what actually happened, and they are entitled to take any action which is not forbidden by the law to attain this end. For instance, if an accomplice is willing to give evidence, and they wish to find out whether he is truthful, it is in my opinion a perfectly logical and scientific method of discovering the truth to test his statements by such actual facts as can be ascertained, whether those facts are relevant in the subsequent trial or not. I see no objection either to their trying, within the limits of the law, to persuade unwilling witnesses to tell the truth, or to their confronting unwilling with willing witnesses. Mr. Armstrong's evidence that he confronted Manik and Seo Narain, because it was his experience "that when one man denies a true statement made by another he will, when confronted with that other who has given the show away, break down in his denial and tell the truth," seems to me in the plainest accordance with common sense, and to be a candid admission of a practice of which no police officer need be ashamed. Of course, if statements so obtained are used against the person making them, other considerations arise, but that is not the case here.

The learned Vakil for the appellants argued repeatedly that such and such a proceeding was bad, because it was "unknown to the law", and he was therefore forced into contending that the police are not entitled to have accused persons identified, and this contention seems to me to be a perfect logical "*reductio ad absurdum*" of his argument. Clearly where a Court has to decide, whether it can safely believe a man, who swears that the prisoner in the dock was the man whom he saw committing an offence, the vital fact to ascertain is whether he recognised the man when he first saw him after the crime. Anybody can swear to the identity of a man whom he has seen a dozen times between the arrest and the trial. But according to the argument all this evidence must be excluded. Further, it is evident that no case of a crime be sent up for trial, for the investigating officers would be unable to

ascertain if there was any direct evidence against the accused. It seems to me that the argument has only to be stated to be seen to be untenable and with it falls the contention that the investigating officers may do nothing not specifically authorised by the Code.

As regards the detention of Seo Narain and Manik Chand, it is sufficient to say that they do not themselves complain of it. There is nothing to show that they were ill-treated or that they were unwilling to stay. The police are entitled to try to obtain King's evidence although, as I have observed, if these statements were being used against Seo Narain and Manik Chand, other considerations would arise. Of course the police had an opportunity to suborn and tutor these witnesses, but the fact that they had the opportunity is no evidence that they availed themselves of it. Whether the evidence ultimately given is true or false must be decided by comparing it with the other evidence which is given to corroborate it.

I do not think it necessary to deal with the very technical objections to Bishun Dutt's confession as in my opinion the case against him is quite independent of that confession.

On the facts I find that the approver has been amply corroborated both as against Moti Chand and as against Bishun Dutt and I accept his evidence as true. If it is accepted, there can be no doubt of the guilt of the accused. According to the approver he was left in the guest room while the other three arranged to look after the mohanth, tie him up, and put a guard on him. It is impossible that the mohanth could have received all the injuries proved by the medical evidence without being able to make a cry for help, if but one man had attacked him. It must be assumed that the three carried out their intention that they should all attack him. But the strongest, and in my opinion, conclusive fact is that Moti Chand never repudiated his share in the murder. The approver says that as they went to Raghunathpore, they discussed whether it had been necessary to kill the mohanth for their own safety. Moti Chand thought that it was not, but it is not suggested that he ever repudiated having taken any part in the murder itself. This

evidence is very strongly corroborated by the evidence of the Jaipore witnesses, whose evidence shows that when the murder was narrated in the presence of Moti Chand at Jaipore, there was no suggestion on his part that he repudiated having taken any part in it. I can not find even that any cross-examination of the approver or of the Jaipur witnesses is really directed to this point. It is contended that the Jaipur witnesses should be disbelieved because they have told falsehoods in favour of the accused. This contention seems to me opposed to common sense. A man will not willingly incriminate his friend and it is very natural and probable that a witness of a low degree of morality should tell falsehoods in favour of his friend. But obviously in such a case the evidentiary value of the reluctant incriminating statements is enhanced rather than diminished by proof that the witness is sufficiently attached to the accused to perjure himself in his behalf when he can. I attach no importance to the fact that at the second murder Moti Chand said " don't kill ". There is nothing to show that he said it at the first murder and that the words were not intended as an effectual protest is clear from the fact that Manik Chand who said the same, nevertheless admits that he continued to hold the boy down " as he would have screamed if I had let go ".

It has been argued that Moti Chand can not be convicted under section 114 and reference has been made to certain cases which however do not seem to me to go beyond the plain words of the law, that to convict a man under section 114 you must prove not only presence but also abetment. If the contention is that to bring a case under section 114, the abetment must be anterior to the crime, and can not be effected by any act which an absent man could not perform, -such, for instance, as by holding the victim, I can not assent to it, though in that case it may be observed that the act would at any rate come within section 109. In my opinion if Moti Chand took an active part in killing the mohanth, as I have no doubt he did, he would by the effect of section 114 be guilty under section 302 of the Code, section 114 being merely an

interpretation clause. I would therefore convict him under section 302 of the Code and confirm the sentence, no mitigation being possible in this brutal and unprovoked crime.

As regards Bishun Dutt it is proved that he was in the company of these men during their long stay in Benares and Mirzapur. They had no money of their own and must have got their railway fares and living expenses from him. During this time a reconnoitring expedition was sent out, and returned, and the cook was sent off in advance to make up necessary preparations. It is inconceivable that all this could have taken place without Bishun Dutt's knowledge. These circumstances so corroborate the approver's evidence with respect to Bishun Dutt, that I unhesitatingly accept it and agree to the dismissal of his appeal.

[True Copy.]

(Sd.)————(illegible),

Head Assistant,

15-2-'15.

[Copy of the Humble Memorial of the entire Digambara
Jain Community of India.]

TO—HIS HIGHNESS SARAMAD-I-RAJAH-I-HINDUSTAN RAJ RAJINDRA
SHRI MAHARAJA SIR SAWAI MADHO SINGH JI BAHADUR,
G.C.S.I., G.C.I.E., G.C.V.O., M.D., etc., Maharaja of
Jaipur.

Most Respectfully Sheweth :—

1. That Your Highness's memorialists are the Digambara Jains of India.

2. That your humble memorialists are for the most part engaged in the quiet pursuit of Commerce and Industry, and the time they can spare from business is occupied in the performance of religious observances, domestic duties, and the study of their religious scriptures. They form a very retired community indeed.

3. That your memorialists beg to approach Your Highness in the matter of one Arjunlal Sethi, a resident of Jaipur, and a subject of Your Highness, who, ever since he graduated in 1902 from the Allahabad University, has worked incessantly and exclusively, sincerely and strenuously in the cause of the education and religious awakening of the Jain community of India.

4. That, his energy being thus entirely consecrated to the spiritual enlightenment of the Jain community, he could and did find very little leisure, and still less inclination, to pay any attention to any political agitation whatsoever.

5. That, influenced by his religion of infinite mercy to every living being, and led by his philosophy to ponder over the eternal problems of the soul and the universe, rather than those of the body and of one particular corner of the universe, Pandit Sethi was incapable, alike by his education and temperament, of associating himself with political movements of any shade whatsoever, and that he detested all violence to life or property as being opposed to the most fundamental precepts of his religion.

6. That in 1913 Pandit Sethi went to Indore to assume charge of his Honorary position as Principal of the Rai Bahadur Sethi Tilokchand Kalyanmal Jain High School in that town ; that while there, he was arrested by the Indore police at the instance of the Criminal Investigation Department of Delhi and sent to Delhi ; and, after being kept in custody for a few days there, he was brought back to Indore and released on bail.

7. That a few days later while Mr. Sethi was still in Indore his bail was cancelled ; he was again arrested and kept in custody for three or four months without ever being tried in any Court of Law in that State or in British India.

8. That after the said period of confinement at Indore he was taken under custody to Jaipur, delivered over to the Police of your Highness, and has since then been in confinement in the Jaipur Jail without any trial whatsoever, without even a definite charge having been framed against him.

9. That in spite of the absence of any accusation or trial Your Highness's Government issued executive orders in December last to keep Mr. Sethi in custody for five years or until further orders.

10. That your memorialists, though unenlightened on this subject in a definite way from any reliable source, have, however, read in the public press (and attached herewith is a reprint of some of the press notes on the case) that Mr. Sethi had been arrested in connection with what was known as the Delhi conspiracy case, and that his name was also mentioned as a suspect in the case relating to the murder of a Mahant at Nimez which was tried at Ayrāh in Behār.

11. That your memorialists did not for a single moment believe that Mr. Sethi could in the slightest degree have been implicated in such outrages, but they thought it most advisable in the interests of justice as well as of the fair fame of Mr. Sethi himself, to await with patience the result of the proceedings in each of these cases.

12. That both the above-mentioned cases have now been finally disposed of by the highest courts of justice.

13. That the Hon'ble Judges of the Chief Court of the Panjab, do not say one single word in their appellate decision of the Delhi Conspiracy Case, which might show even the most distant connection of Pandit Arjunlal Sethi, with that conspiracy.

14. That Ram Lal, the young man who was once a student in the Jain Boarding House at Jaipur was acquitted, and both the trying and the Appellate Judges concurrently held that he was not proved to have been a member of the conspiracy.

15. That there is no indication in the judgments of either the trying or the Appellate Court of even a shred of evidence to connect Pandit Arjunlal Sethi with "the Delhi Conspiracy".

16. That in their judgment on appeal in "The Arrah Murder Case," their Lordships of the Calcutta High Court have distinctly said that "*as a whole the Jain institution at Jaipur was a religious and not a political institution.*" In the whole of that long and well-considered judgment, there is not a single word to show that Pandit Arjunlal Sethi was in any way connected with the murder.

17. That Pandit Arjunlal Sethi, therefore, appears to your memorialists, to be an unfortunate victim of unfortunate circumstances, who has not been allowed to explain away some undisclosed suspicions of some high authorities.

18. That your humble memorialists would be glad to find that this conjecture pressed upon them by the force of circumstances, was quite unfounded, but till then they cannot conceive of any other ground for the detention of Arjunlal Sethi in prison.

19. That Your Highness's subjects, and the whole of the Indian public have not heard of any offence, crime, misdemeanour, or improper conduct of which Arjunlal Sethi may have been guilty.

20. That the Digambara Jain Community of India, for, and among, whom Arjunlal Sethi incessantly worked is in a position to

say that he was wholly and solely an educational and religious enthusiast, and his detention in jail has caused deep injury to the feelings of the Digambara Jain Community, as well as of all other Jain Communities, and of the whole of the Indian public of every caste and creed, many of whom have joined in this humble memorial as signatories.

21. That your memorialists venture to submit that the arrest of Mr. Sethi without any charge and his detention in custody without any trial for such a long time is against every dictate of Law and Reason ; that it has the most prejudicial effect on the educational and religious activities of your memorialists' community in general and of a most important section of Your Highness's subjects in particular ; and that it is entirely inconsistent with the noble traditions of justice and good government of Your Highness's house.

22. That Your Highness's house has been renowned throughout the whole of India ever since the days of Maharaja Jai Singh II, the great mathematician and astronomer, as the most liberal patron of Art and Science and that consequently Art and Science and Scholarship have flourished in Jaipur as nowhere else in India.

23. That the greatest modern Jain scholars flourished in Jaipur and the large number of splendid Jain temples and Shastra-Bhandars justify the popular saying that Jaipur is really Jainpur.

24. That Your Highness's ancestors waged the most strenuous struggles for centuries past in the protection of Religion and thus earned fully the proud title of " The Protector of Cows and Brahmins. "

25. That Mr. Arjunlal Sethi, a great scholar and staunch religionist, is in all essentials a Brahmin of the highest order and attainments and deserves the warmest consideration and protection from Your Highness—the Ruler of Jaipur and the descendant of Maharaja Jai Singh II.

26. That your memorialists are fully aware of the many and varied proofs of enlightenment and benevolence which Your Highness has given in the course of your long and prosperous reign, equalling, if not eclipsing, the scholarly fame and material renown of the great Maharaja Jai Singh II himself ; that therefore it was a most unpleasant surprise when they learnt of the sad case of Pandit Sethi. They could not conceive how a great Hindu Ruler of an ancient Rajput State, having Your Highness's traditions, Your Highness's training, and Your Highness's temperament should act so inconsistently with his ancient and honourable title of " Protector of Cows and Brahmins " as to consent to the arrest without any charges, and confinement without any trial, of a man with the attainments and career of Mr. Sethi, whose services have contributed so much to the advancement of Your Highness's subjects and of the Jain community, and whose innocence has never yet been openly challenged anywhere.

27. That your memorialists are not unaware of the present abnormal situation brought about by the war and of consequent pressure of business of the utmost importance which must of necessity clam Your Highness's most urgent attention ; and that consequently Your Highness may not have had time to look closely into the case of Mr. Sethi. But your memorialists confidently hope that the obvious injustice of Mr. Sethi's incarceration will not fail to obtain its due consideration from Your Highness, and that it will not be allowed to stain the glory of your house nor to blacken the annals of Your Highness's noble reign, for a moment longer than is absolutely necessary when that case with all its irregularity and inhumanity is brought under Your Highness's personal notice.

28. In conclusion, your memorialists humbly pray that the long detention in jail for about 18 months has told heavily upon the health of Pandit Arjunlal Sethi, which was never robust, and has entailed unutterable sufferings upon his wife and 4 small children, and that he may be released forthwith. On this happy occasion of the birthday celebrations of Your Highness, the humble memorialists

will not have this humble boon denied to them. If necessary, your humble memorialists would be willing and ready to furnish a reasonable security for the appearance of Pandit Arjunlal Sethi, if he ever were called upon to explain any matter whatsoever.

And your memorialists as in duty bound shall ever pray.

SITAL PRASADA BRAHMCHARI,

Hirabagh, Girgaum, Bombay,

AND

OVER 11,000 OTHERS.

List showing the number of persons who have signed this humble memorial and the places to which they belong arranged alphabetically.

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